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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Wednesday 28 August 1991

# Journal des débats (Hansard)

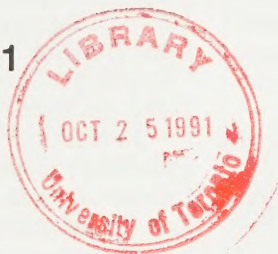
Le mercredi 28 août 1991

## Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 28 August 1991

The committee met at 0903 in the Sheraton Hotel, Hamilton.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

### NIAGARA FALLS CANADA VISITOR AND CONVENTION BUREAU

**The Chair:** Before we start today, I should bring people's attention to the presence and availability for the audience of translation devices.

Our first delegation today is Mr Gordon Paul from the Niagara Falls Canada Visitor and Convention Bureau. We have approximately half an hour. Please use that time as you wish, but typically the delegations divide that time between their presentation and an opportunity for the committee members to pose questions to them.

**Mr Paul:** Thank you very much, Mr Chairman, and members of the standing committee. We appreciate the opportunity for the Niagara Falls Canada Visitor and Convention Bureau to address the issue of Sunday shopping re Bill 115.

We would like to make very clear that we feel that the freedom of Sunday opening should prevail throughout the country. However, having noted this government's insistence on a common pause day, we acknowledge the effort taken in recognizing the importance of Sunday opening to the tourist industry and the economic impact it has on the province and our city, Niagara Falls. Therefore, it is to the area of market development for the tourist industry that I wish to draw to your attention.

A recent market research study done jointly by the Ministry of Tourism and Recreation and the Region Niagara Tourist Council released statistics which related to the consumer interest in regional activities. It is indeed worthy to note that shopping takes the lead, with 47% of all visitors stating their prime activity is shopping. The survey reinforces the bureau's role to respond to the challenges of attempting to position itself as an international preferred travel destination by offering diversified experiences. To

this end, the bureau recognizes the importance of this new proposed legislation.

By formally agreeing to Sunday opening for the tourist areas, you will be providing Niagara Falls, Canada, the opportunity to promote activities which will have immeasurable impact on visitor visitation and retention. It is our considered opinion that visitor retention is exceedingly important. We therefore want to ensure that, because of the sensitivity of this issue to local communities, you consider the following recommendation: that the decision regarding the bylaws for Sunday opening so stipulated by the province be delegated to the local communities.

Mr Chairman, that is the formal presentation from the Niagara Falls Canada Visitor and Convention Bureau. If there are questions, I would be pleased to attempt to answer them.

**Mr Daigeler:** Thank you very much and good morning. As a little aside—although perhaps it is not too welcome news for Hamilton, the city we are in right now, but of course it is welcome news for the area I represent—the OMB decided in favour of the application by the Ottawa Senators to build the Palladium in Kanata. Certainly that will be related to tourism and hopefully it will help not just Ottawa-area tourism.

**Mr Paul:** If they are allowed to play on Sunday.

**Mr Daigeler:** Presumably. What is happening at the present time in the Niagara Falls area? Are all the stores open? Even under the previous legislations, even the Tory ones, what happened? Was it just in the specifically defined tourism areas that the stores opened, or was it that pretty well everybody stayed open?

**Mr Paul:** No, it is not widespread. It was more particularly confined to those establishments within the designated tourist area. It is very broad in Niagara Falls, I grant you, but not all retail operations are open.

**Mr Daigeler:** What about the malls? Is it the same picture there?

**Mr Paul:** We have just the one major mall in Niagara Falls, Niagara Square, and it was allowed to open. I do not know if it enjoyed any measure of success by being open.

**Mr Daigeler:** All of the retailers in that mall were open, as far as you know?

**Mr Paul:** I believe that is part of the terms of the contract with their leases, yes.

**Mr Daigeler:** Are you familiar at all with the profitability of the Sunday enterprise in the Niagara Falls area?

**Mr Paul:** I am indeed. The properties I represent in our sector are extensive, and without Sundays we would have a very difficult time. Profitability is great, with the exception of this particular year we are in. I do not want to discuss that.



**Mr Poirier:** How would you describe the economic relationship between what we know as the traditional tourist attractions of your area and what I may describe as the ordinary, maybe necessarily non-tourist, business openings on Sunday? Do you feel there is a link? Is there a symbiotic relationship between both of these sectors, or what? What if we close, for example, the furniture stores on a Sunday? How would that affect things? What is the relationship?

**Mr Paul:** There is certainly no feeling of animosity. The sectors are very distinct, there is no question about that. It is the visitor who will really dictate what is wanted and what is not wanted. That makes the distinction very clear.

**Mr Poirier:** Do you have any surveys to indicate what visitors would like to do in your area?

**Mr Paul:** Yes, we have had a considerable number of surveys. I referred to one this morning, which is probably the most recent and indeed very significant.

0910

**Mr Poirier:** If you closed non-traditional-tourist types of stores or businesses in Niagara Falls, would that have an impact on the other tourist volume potential?

**Mr Paul:** No, I cannot see that it would.

**Mr Carr:** Thank you for your presentation. As I understood it when you made your presentation, you said you would like the municipalities to have the option.

**Mr Paul:** That is correct. Is there a further question or may I elaborate on why I said what I said?

**Mr Carr:** No, you can elaborate. Go ahead.

**Mr Paul:** Because Niagara Falls is unique compared to other jurisdictions even within the tourist community, we believe we know best what it is that the visitor wants or does not want. It is for that reason that we make that statement. Someone in Timmins has no feeling for what goes on in Niagara Falls, just by way of example. That is the reason.

**Mr Carr:** There are other large portions of the province that do want to take the tourism exemption. Collingwood has said it already has. Thunder Bay, Kenora, Sault Ste Marie and parts of Kingston said they will take it. Some of them will not; North Bay says it will not. But very clearly there are a lot of parts of this province that believe their area is in tourism and, as you may know, some of them have taken the whole city or town and said it is an entire tourist area. Very clearly tourism is a big industry in this province. In fact, last night in an interview with Havard Gould, I noticed the Premier even said how big tourism is.

One of the concerns we have is that there are some people—for example, on the government side—who have said that people do not come here to shop, notwithstanding that people in the industry come in with a lot of statistics saying that 47% of the visitors like shopping. What do you say to those people who say, “No, that isn’t one of the reasons they come here”? We have heard some of the people say, “No, they come for our great beauty and all the other wonderful things we have.” Statistically, the people in that industry say shopping is a big reason. What do you say to those people who believe it is not a big part of the reason to come here?

**Mr Paul:** I would invite them to come and work for me for a summer, and indeed a winter, to find out. This is exactly what I do. I am very much involved in the accommodations sector, food and beverage retail. Very quickly they will understand what it is that a tourist really looks for. Retail shopping is a very large portion of our total sales in the course of 12 months.

Further to that, we are fighting a terrific battle as it applies—and I do not want to go too deeply into the subject—to cross-border shopping. If Sunday opening is called to a halt, our American friends will just clap their hands with glee. That is not the only reason. Do not misunderstand me.

**Mr Carr:** As you know, one of the concerns voiced by some of the groups is that the tourism exemptions are so broad that virtually the entire province could open if it wanted and there is not anything the province can do. They could say, “We’re going to take the tourism exemption, and we meet the criteria listed that you, the province, have given.” Notwithstanding the fact the Premier said there would be a common pause day, a lot of the municipalities have said: “Thank you very much. You’ve given us the ball and we’re going to open.” But now a lot of groups are saying as a result of that, with this bill being looked at right now, we should tighten the tourism restrictions and define them and have a provincial board to oversee the decisions. I was wondering what your thoughts were on the tourism criteria. Do you like them? Not broad enough? Too broad? What would you do with the criteria?

**Mr Paul:** Once again, I would leave it to the local municipalities to make that determination, for reasons stated. In so far as Niagara Falls is concerned, and I can only speak for that, really, from experience, we are reasonably well satisfied with conditions as they are. What happens in other areas of the province as it applies to the industry, as one involved in the industry, I would listen to them and see what their concerns and cares are.

**Mrs Cunningham:** In Ontario right now the government’s position seems to be that it is wanting to install some legislation that supports a common pause day. The criticism of this particular piece of legislation is that it does not do that because there is no provincial standard; for instance, a tourism exemption. The last time we were down here, I think I am right in saying, your bureau wanted a tourism standard for the province. I think it was you who worked very hard with your regional municipality to put forth one of the best definitions we saw during those hearings on what tourism was. Perhaps you are saying that has been successful for you and, in order to preserve a common pause day in some respect across the province, we could still look to you for that definition. I am wondering whether you still have your definition and if you are prepared to share that with us.

**Mr Paul:** I could tell you a lie and say I know exactly what you are referring to, but I am afraid you have caught me a little unprepared.

**Mrs Cunningham:** No, it is fine; it has been two years as opposed to one year.

**Mr Paul:** If that is an agreeable standard we would be more than happy to participate. May I ask you a question?



**Mrs Cunningham:** Sure.

**Mr Paul:** Would you tell me a good definition for common pause day? I do not truly understand that term.

**Mrs Cunningham:** I will refer that one to the government representatives.

**Mr Fletcher:** Thank you for being here this morning, sir. Just a few questions. You were talking about what tourists like to do and you gave some statistics. It always gets to me about the statistics, because it always makes it sound as if you are saying people go to Niagara Falls because Canadian Tire is open and we know that is not a fact.

When I am a tourist in Collingwood or the Muskokas I am not going because the retail stores are open, but when I get there and they are open on Monday, Tuesday, Wednesday, Thursday, Friday or Saturday I may do some shopping. The attraction is not so much to Sunday shopping as much as what is there to attract people. The secondary reason is that you are able to shop at certain times.

**Mr Paul:** I am sorry, I missed that last bit.

**Mr Fletcher:** You are able to shop at certain times. I have heard this from the tourist industry and it seems to agree that shopping is not the main attraction. The attraction is what is at the place, such as Niagara Falls, where it could be the falls itself or the wax museum. Then, when they get to the place, shopping is an activity but not the main draw. Is that a correct assumption?

**Mr Paul:** The statistics I reported to you, from one of your own ministries, I might add, said shopping is a prime activity when they are there.

**Mr Fletcher:** That is right.

**Mr Paul:** And as it happens, Saturdays, Sundays and Tuesdays are probably three of the largest retail spending days of the week.

**Mr Fletcher:** That is up for debate, because we have heard from other people that it is not the case.

**Mr Paul:** I can only relate to you what our experience is in Niagara Falls.

**Mr Fletcher:** That is right, and other people relate other things. Another thing that is interesting from the Ministry of Tourism and Recreation is that it is not so much the industries that are increasing employment. During the time of wide-open Sunday shopping, the number of employees in the hotel business and some of the other areas decreased. The number of employees in the entertainment sector, such as Canada's Wonderland or things like that, increased. That is where we are finding the increase in employment. It is not in the retail sector or anything else; it is in the entertainment sector, such as the water slides and the parks. The attractions are attracting the people, not the shopping. That is the point I wanted to get at.

**Mr Paul:** And attractions, for your information, are low-labour operations; therefore they will not increase except by the numbers of attractions.

**Mr Fletcher:** But as I said, the stats from the Ministry of Tourism indicate they are increasing.

0920

**Mr Paul:** Maybe if there were no opportunity for us to be available to the consumer on a Sunday, it would make scheduling a devil of a lot easier. I might add too that in our operations we are presently employing almost 300 persons and we have never had a difficulty with Sunday being a day of work.

**Mr Fletcher:** As far as the tourist exemption laws are concerned, for the first time the regulations are also being presented to the public. No other government has done that before, and that is an interesting fact. Usually regulations are made in the back room and then presented, but this time they are out there wide open for people to see and debate.

**Mr Paul:** And hopefully to understand.

**Mr Fletcher:** That is why I was asking you, do you understand them and do you agree or disagree with this?

**Mr Paul:** I have not had the opportunity to read them all so therefore I do not understand them.

**Mr Fletcher:** Okay, fine. Thank you very much, sir.

**Mr Paul:** Thank you. I did not get an answer to my question.

**The Chair:** What was the question?

**Mr Paul:** What is the definition of a common pause day?

**Mr Fletcher:** Gord will answer that one.

**Mrs Cunningham:** From your heart, Gord.

**Mr Mills:** From my heart, without going through all the—

**Mr Daigeler:** We have covered that several times already.

**The Chair:** Go ahead, Mr Mills.

**Mr Mills:** Subsection 4(2): "The council in passing a bylaw...shall take into account the principle that holidays should be maintained as common pause days." Then you go to clause 1(1)(a) of the act and the definition of a holiday is Sunday as a recurring day, New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, December 26 and "any other public holiday declared by proclamation of the Lieutenant Governor."

Having said all of that, traditionally in Ontario Sunday is the day most recognized as a common pause day: schools are closed, buses are shut down, everything is at a sort of traditional slowdown and Sundays give families time to share and grow together, traditionally. That is the common pause day.

**Mr Paul:** Thank you, sir.

#### ONTARIO FEDERATION OF LABOUR

**The Chair:** Our next presenter is Gordon Wilson, president of the Ontario Federation of Labour, and Duncan MacDonald, the program co-ordinator from the Ontario federation.

**Mrs Cunningham:** Mr Chair, may I just ask a question while they are sitting down?

**The Chair:** Could I introduce the delegation first?

**Mrs Cunningham:** All right.



**The Chair:** You have approximately half an hour to divide between your presentation and the many questions from the committee members. After Mrs Cunningham's question please feel free to proceed.

**Mrs Cunningham:** Thank you, Mr Chairman. Given the last question for all of us, I just think that perhaps during the clause-by-clause we should be thinking about an amendment for subsection 4(2). I am now responding to Mr Mills. He added his editorial comment that traditionally Sunday has been a common day of pause. Right now the proposed legislation does not refer to that at all. I think he was quite right when he said the principle that holidays should be maintained as common pause days is very different from his response. I think it is something he should take with your support to the government, Mr Chairman, and find out just what it does want in there. I think that is something the government should bring forth in an amendment. It is not fair for me to answer that question in the way Mr Mills did because I do not think that is the intent of the legislation. I thought the question put by the public today and on other days has been fair and it should be defined in some way. I leave that challenge with you, Mr Mills.

**Mr Lessard:** On a point of order, Mr Chairman: Seeing as we are starting five minutes earlier, I wonder whether we could add five minutes to the time and go right until 10 o'clock? Is that agreeable?

**The Chair:** It seems to be more or less agreed. We will see how it goes.

**Mr Wilson:** I understood the terms of the agreement were 30 minutes, but obviously I am in the hands of the committee.

**Mrs Cunningham:** Are you always this agreeable?

**Mr Wilson:** I am most definitely, and as the member for London North, a fellow Londoner, you should be aware of that.

**Mrs Cunningham:** I knew there was a reason for it.

**Mr Wilson:** If I can, Mr Chairperson, you have already introduced our delegation, so let me make the presentation we have. It is a written presentation. I understand members of the committee have copies. We are prepared to respond to any questions that come our way.

On behalf of the Ontario Federation of Labour, we would like to thank you for the opportunity of appearing before the standing committee on administration of justice to discuss the Retail Business Establishment Statute Law Amendment Act, 1991, Bill 115. As you are aware the OFL, with a membership of 800,000 in approximately 60 to 70 different unions across the province, is the largest provincial federation of labour in Canada. Our members work in virtually every sector of the economy and live across Ontario from Kenora to Cornwall and from Moosonee to Windsor.

In preparing this brief we reviewed the involvement of the OFL with the important issue of Sunday shopping or, conversely, working. As early as 1961, delegates to our convention debated and endorsed a resolution calling for the provincial government to regulate the hours of retail

outlets. Resolutions on this issue were dealt with at many conventions, the latest of course being in 1989.

Back in 1969, we were involved with the ad hoc committee on Sunday retail selling, a broadly based coalition of organizations which met with then Premier John Robarts. During this period we have been active with a number of coalitions around this issue. We have put forward the views of our members on numerous occasions to the provincial government, cabinet ministers, a variety of legislative committees and of course to the Ontario Law Reform Commission.

Member organizations of various coalitions have made their views known. Our affiliated unions in the retail sector, the Retail, Wholesale and Department Store Union and the United Food and Commercial Workers Union, have made their views known. Individual citizens have come forth as well to make their views known. The issue has been dealt with in the courts. Needless to say, there has been public discussion on this issue over the years. The issue is known and understood by members of this committee.

Inside the labour movement there is broad support for action on the issue of Sunday shopping or Sunday working. This came about because of a number of factors, including workers' personal aspirations and experiences, length of the public discussion on the issue, the internal educational activities carried on within the labour movement by retail workers and their unions and the educational activities in their community carried on by a wide variety of organizations and individuals.

The labour movement accepts the fact that in our society there is a need for a certain range of services which must be available at all times, which includes Sunday. There is also the acceptance that the nature of some production activities necessitates work on Sunday. Workers involved in these sectors accept this as a fact of their employment and through their unions deal with any issue which may arise from this situation.

The labour movement is supportive of Sunday as a common pause day. We are not suggesting that this is a panacea for every socioeconomic problem in Ontario in 1991. However, as a society we acknowledge the importance to workers of time away from their workplace, which is often a stressful situation, time which may be spent with their families, their friends and in personal pursuits. We believe that workers, their families, their friends, their employers and society will all benefit. We are not convinced either by the arguments put forward in support of Sunday shopping or the idea that forcing tens of thousands of fellow citizens within the province to work on Sundays will somehow improve the quality of life of our members and make Ontario a better place to live for all of us.

In dealing with the Retail Business Establishments Statute Law Amendment Act of 1991, the labour movement has attempted to evolve and put forward a common position in the course of these hearings. On this issue the federation has worked closely with, among others, the United Food and Commercial Workers. Bill 115 is a positive step forward. However, there are a number of areas of concern where we believe Bill 115 could be improved.



In its brief, the UFCW puts forward five areas of concern: (1) The intent of the Retail Business Holidays Act; (2) the municipal option; (3) drugstore openings on Sunday; (4) enforcement of the legislation; and (5) the definition of "retail business." Each of these points has been discussed in some detail during these hearings. While these points are most often put forward by UFCW in its presentations, it should be understood that the position is also supported by the wider labour movement within the province. The recommendations are based on the desire to have legislation which is understandable, enforceable, inclusive and fair for the people of Ontario.

The intent of the Retail Business Holidays Act would be strengthened with the following amendment to subsection 4(2): "4(2) The council, in passing a bylaw under subsection (1), must maintain the principle that holidays are to remain as a common pause day; that is to ensure that they remain days on which most businesses are not open and days on which most persons do not have to work."

It is important that the intent of the legislation is known and followed across the province.

0930

The question of municipal option is strengthened with the following amendments. We would suggest first the new subsection 4(1) to read:

"4(1) Notwithstanding section 2, and subject to the provisions of sections 4(1)(a) and (b) below, the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays where it is essential for the maintenance or development of a tourist industry and where it is essential to meet the educational, cultural, leisure and recreational needs of the tourist; and

"(a) only retail business establishments in which the total area used for serving the public or for selling or displaying to the public in the establishment is less than 4,000 square feet; and

"(b) the number of persons engaged in the service of the public in the establishment does not at any time exceed four."

The government must establish a committee of the affected stakeholders that will prepare and recommend a new set of viable tourist criteria or regulations. The stakeholders should include the representatives of the affected groups, such as retailers, unions, and the government itself.

According to the amendment, the tourist criteria would not form part of the legislation. However, we recommend that a new set of viable regulations, established by the stakeholders mentioned above, be integrated in some form into the legislation.

Section 4(8) must be modified to state, "The council's decision may be appealed by any interested party to the tourist exemption board."

The municipal option and the development of tourist criteria are both strengthened by these recommendations. It is a positive development to recommend that the development of tourist criteria be made more inclusive and that interested parties have the right to appeal a council's decision.

The issue of drugstore openings on Sunday would be dealt with by the following amendments:

"3(2)(c) The total area used for serving the public or for selling or displaying to the public in the establishment is less than 2,400 square feet; and

"(d) The number of persons engaged in the service of the public in the establishment does not at any time exceed four, including the pharmacist, who must be present in the establishment during business hours."

This recommendation provides that the people of Ontario will have access to drugstores to deal with their medicinal needs on Sunday.

The enforcement of the legislation would be dealt with by the following amendments:

1. The proposed amendment of minimum penalty (3.1) be modified to include, "For first offences, the minimum fine for conviction be \$10,000, and for subsequent offences, the minimum fine for conviction be \$20,000."

2. Section 8(1) be amended to read:

"8(1) Upon the application to the Supreme Court by any affected or interested party, the court may order that a retail business establishment close on a holiday to ensure compliance with this act or regulation under this act."

These recommendations we believe would enhance the enforcement and effectiveness of the legislation.

The definition of a retail business would be clarified with the following amendments:

"1(1)(b) 'Retail business' means the selling of goods or services by retail to any member of the public, including a member of a club or co-operative of any other group of consumers.

"(c) 'Retail business establishment' means the premises where retail business is carried on. Any space or stall in markets, particularly in covered markets and 'flea markets,' shall be considered to be a retail business.

"(d) 'Principal business' means that portion of the business which accounts for 80% of the retail business establishment's gross sales."

We understand that the committee has already received a legal opinion on the definition of "retail business" with regard to Price Clubs. We also understand that the enforcement of the present legislation will cover such businesses. This situation should be clarified for both the retail businesses in question and the general public by including these amendments in Bill 115.

These amendments put forward by the labour movement will improve, we believe, the intent and effectiveness of Bill 115. This is the proper way to deal with the issue of Sunday shopping/working. An important component of this issue is the rights of retail workers, which will be dealt with effectively by these proposed amendments to Bill 115. We do not believe that the rights of retail workers will be protected effectively if our proposed amendments are not accepted and those workers must rely only upon the Employment Standards Act.

The purpose of the Employment Standards Act is to provide a minimum level of protection in the area of wages and conditions of work for most Ontario workers. This federation has always taken the position that an effective Employment Standards Act is needed in Ontario. The present act is too flawed, both in coverage, which is scope, and of course content, to offer the kind of protection

needed by workers. Over the years we have presented to the Ontario governments our suggestions for needed reforms to the Employment Standards Act. The latest presentation of proposed changes was in June 1990, and it was quite lengthy. The need for change in this legislation is obvious to us. Workers, through their unions and their collective bargaining processes, build on the foundation established, which is effectively a floor under the ESA.

We are concerned with the effectiveness of the proposed amendments to the Employment Standards Act found in Bill 115. We accept the positive intent of those proposed amendments. However, we believe that, if passed, they will offer little real protection for a retail worker faced with an employer who, by nature, proclaims his right to be open, or necessity—"I have to be open because of my competition"—wants the employee to work on Sunday.

In this situation, if workers are members of unions, they know they have the needed backup support from their collective agreement and their union when standing up for their rights. If workers are not unionized, as is the case of a majority of retail workers, then they will know that their only real protection relies on the employer's goodwill. If they do not wish to work on Sunday and are faced with the request or demand from their employer, they have a number of options. The first is obvious: to quit and seek employment elsewhere. The second is to refuse and to involve the employment standards branch, which is a long, complicated process. The third is simply to work but to resent it.

Current economic conditions limit employment opportunities. Therefore, workers are reluctant to leave existing jobs, for obvious reasons. The first option is not viable for the vast majority of workers. Workers could refuse and involve the employment standards branch if there are sufficient resources allocated and no backlog. The employment standards branch could give a favourable ruling for workers within a reasonable period of time.

In spite of the proposed amendments under 39eb, ec, and f in Bill 115 and other existing provisions in the Employment Standards Act, non-unionized retail workers know that they are in an unbalanced power relationship with their employer. Workers may win favourable decisions at the employment standards branch, but the next day they have to come back to the same workplace with the same employer. If employers are so inclined, there is an opportunity that they can win eventually by making life miserable for workers through a wide variety of means and techniques. The onus is on workers to continue to make the case that employer's actions are related to their position on Sunday working, and not a reverse onus on employers to make the case that their actions are not related to the workers' position on Sunday working.

How long this process lasts will vary from worker to worker. The most likely conclusion is that workers give up and/or move on somewhere else. The message to other workers, and this is important, is that refusing to work on Sunday and involving the ESA branch will likely cause you problems with your employer. To avoid a hassle with employers, the natural response for many workers is to agree to work on Sunday when confronted with a request or a demand from their employer.

If workers do not use these proposed amendments, then this situation will be pointed to by some as proof that there was never any need for such amendments since few retail workers felt the need to use the Employment Standards Act. On the other hand, it may also be used as proof that retail workers like to work on Sunday since few complained when asked to work on that day. As stated earlier, there is an obvious need for significant reform of the scope, application, administration, practice and procedures of the ESA. Such reforms will be in the interests of the working people of Ontario, some of whom—a great many of whom—work in the retail sector. We realize that this suggestion is beyond the mandate of this committee at this present time.

The labour movement views the Retail Business Establishments Statute Law Amendment Act, 1991, Bill 115, as a positive development, a piece of legislation which we believe will be improved if the committee includes the amendments which we have suggested.

That concludes our formal presentation. We would of course be prepared to respond as best we can to any questions the committee members may have.

0940

**Mr Daigeler:** Thank you, Mr Wilson, for your presentation, for coming before us to make your views known. I have in front of me a research report that was given to us by our very efficient and useful staff support. This report includes the results of a survey that was taken on June 17, 1991, to be precise, so it is a very recent one. This survey asked people, "Should Sunday shopping be allowed in Ontario?" The results were 58% yes, and 33% no.

That was further broken down among very many factors, male, female, ethnicity and so on—also, union household. Those who were union households, while the proportion was not as pronounced as I just indicated, the opinion was still basically split between those for and those against; 48% said they agreed with the intention of the Ontario NDP government to prohibit, as much as possible, Sunday shopping and 47% said they disagreed with that. Now, these are union households. How would you react to these results, which seem to go against the view that you are putting forward, or at least modify it?

**Mr Wilson:** I think the first observation I have is that union households are as much a part of general society and the general public and hold much the same opinions on issues as do others. I think the weakness in that is that where you ask people a question which would lead to a conclusion of added convenience—like, "Would you like to have the ability to shop on Sunday, to run down to buy whatever you think is a good idea at that time?"—you are likely to get a favourable response. If, however, the second question were to ask, "And would you be prepared to work on Sunday?" I would suggest to you those numbers would be reversed at least. Most people would say they would want further opportunity to do that, but if you said to them, "Do you want to be trapped in the workplace on Sunday?" you are going to get a different response.

It is a little bit like taxes. If you say to people, "Are you paying enough taxes?" they say yes. If you say, "Is the



other person paying enough taxes?" they say no. The definition of taxes is, "I think everybody who makes more than me should pay more."

**Mr Daigeler:** I think you are quite right in your answer. Obviously union households are part of the general population, and everybody likes a convenience. On the other hand, we have had many people appear before the committee who said, "Listen, nobody is being forced to work on Sunday. We have a lot of people who want to work on Sunday and who insist on working on Sunday." In fact, in that regard—I am referring to your brief on page 4 where you say that the idea of forcing tens of thousands of fellow citizens to work on Sundays will not improve the quality of life—is the use of the word "force" deliberate, or do you think it is just an exaggeration, perhaps, in order to make a point?

**Mr Wilson:** It would be an exaggeration in some cases, but it would not be in others. Like any other legislative initiative, I think it is the objective of a government, and indeed this committee, to try to find as universal and as equal an application as one could find. The difficulty we have there is—I can speak from experience—under our collective agreements we have dealt with the question of working on Sunday in a lot of manufacturing processes where it is necessary. For example, here in Stelco you cannot shut down the blast furnaces. You have to keep them going on Sunday where there are continuous operations in some production processes.

I think our difficulty, however, and I had this argument with Mr Sorbara when he introduced legislation while he was the Minister of Labour, is that there is no way really to protect people, excepting the employer's goodwill. I am talking about a non-union sector, where most of the retail workers reside. That can only happen through a legislative initiative which is clear, where the party's responsibilities are clear.

It is also true to say that a number of people are quite content to work on Sunday. I make no bones about that. But I think the issue here is that if a decision is made by a worker, which is generally the decision of the family that he or she does not want to work on Sunday for whatever reason, then they should have the right not to have to do that. It is very difficult if the onus is on the worker to enforce that right. If you go through the long process in the employment standards branch there is too much room for those that want to take advantage of it to intimidate workers.

**Mr Daigeler:** if I could just make this one point, I think what could happen, if I could give you this illustration, the employer comes to me and says, "We work on Sunday." I am a retail clerk in a chain somewhere and I say, "No, I do not want to." I am subtly advised down the road that my attitude is not conducive to my advancement within the enterprise. Or maybe three weeks later, when I show up and park in the wrong parking spot, I could be discharged. It is very similar to the argument we had on reverse onus, with workers being fired during organizing drives some years ago when the Conservative government brought in the protection that was required.

**Mr Daigeler:** Would you agree with me that it is really at least an exaggeration, if not a little bit misleading, for the current government to say there is this absolute right of refusal to work on Sunday, and that they are really trying to make a lot of hay about these provisions they are claiming are so much better in this particular law than in the previous one.

**Mr Wilson:** As we have argued in our brief, we would like to see it clearer and strengthened and we would indulge your support on that question.

**Mr MacDonald:** If I could just make a point clearer, we mentioned that we have been passing resolutions since 1961 on this issue. I think it is important to tell you what that means. It is not a few people at our headquarters on Gervais Drive passing them. At our last convention we had over 1,700 delegates from across Ontario who were elected by their locals and sent to the convention. I would say well over 80% of them are rank-and-file activists not holding full-time positions with their unions, and probably about 40% are first-time delegates to the convention.

We can see that this policy has been touched over the last 30 years in a very democratic manner, so this is not something the labour movement just came to suddenly and said, "Wouldn't it be a good idea if we had this kind of position on the issue." It has been there, it has been discussed openly and this has been going on for about 30 years. I just wanted to get that on the record as well.

**Mr Carr:** Thank you very much, Mr Wilson, for a fine presentation. I noticed on page 14 you called this bill a positive development, but you may have been here earlier when I spoke about what we have heard across the province. There is no doubt that significant portions of this province will be open and I used Collingwood as an example, Thunder Bay, Kenora, the Sault, Windsor, where they said they are going to take the tourist exemptions and be open.

The Premier said he is committed to a common pause day. The Solicitor General said that, but the fact remains that if this law is not changed there will be Sunday shopping in this province. I noticed on page 10 you said that the workers' rights will not be protected unless you get these proposals brought in. If nothing changes in the law, do you believe the Premier of this province has broken his commitment to labour?

**Mr Wilson:** He did not just make it to us, he made it to everybody, including you.

**Mr Carr:** So he broke it to everybody. Okay.

**Mr Wilson:** You probably have more influence on him than I have.

**Mr Carr:** I doubt that. I only wish.

**Mr Wilson:** If I had my druthers I would opt for a tourist exemption board of stakeholders as proposed and supported by the UFCW where certain criteria should be laid down centrally, and the tourist exemption board would make those decisions.

0950

**Mr Carr:** What I am getting at is that some of the other members of the group and the United Food and Commercial Workers, as we have gone around the province,



have been fairly aggressive. They have called the tourism exemptions a joke and said what we really have is wide-open Sunday shopping. Read the Hansard; they called it a joke. What we have, though, is a situation where the Premier—and the Solicitor General, as recently as last Thursday—has said, “We are still going to have a common pause day.” Quite frankly, it will not be up to you and me to make that judgement of him. People are going to be able to say two years from now, “You made the commitment on a common pause day and I know I can go out and shop in downtown Windsor, Niagara Falls or whatever.” I was just wondering what your feelings are because as you know, if there are no changes, significant portions will be open. How do you feel you can impress upon the government to change their opinion so they make the changes, because if they do not, clearly there will be Sunday shopping. What else do you think you can do to convince the government?

**Mr Wilson:** I think that is what we are doing here today. As I understand the legislative process, the purpose of public hearings is for any government to receive input from a variety of people affected by the issue. And as I understand the process in my experience with the previous Liberal government, and before that the Conservative government, it is not uncommon for a government to introduce a bill, go through the public hearing processes and then make amendments based on the public hearing and the report of this committee.

So I guess the simplest answer to your question and the most straightforward approach is that I am here today to make our views known, which I have done, and I would hope this committee, as every other presenter would hope, will take our position seriously, and eventually this committee and the government's report will find its way into legislation. I guess what I am really saying, Mr Carr, is I do not see that this process I am engaged in here today is effectively any different than it has been with previous governments.

**Mr Carr:** You know what the other side is saying. The tourism people are coming through and saying, “You're making us go through all these hoops,” and there might be some areas that will be legitimate tourist areas that will now be up to the designation or the whim of municipalities. A lot of people are coming in and saying, “As broad as these are, you're making us go through a lot of hoops and you're hurting our tourism industry.”

I think you might have been here when I mentioned that the Premier last night said in his interview from Whistler that tourism is a big factor in Ontario. The tourism people are saying they should have the ability to open up without having to cater to the whims of the municipality. As you know, both sides of the issue are not happy with this legislation. I appreciate the fact that you are saying we should tighten them. But people, on the other hand, are saying, “No, you're making us go through all these hoops. It's going to be a long process.” Both sides—and I guess that is where the ultimate decision of the government is—are saying it is not working.

I appreciate your recommendation about the tourism exemption board and that you need to lay down the criteria, but

is that not going to be just as difficult when you get all these groups together? How is it going to change when they come out with—

**Mr Wilson:** My experience has been when stakeholders of varying views get into the room, there is consistently an opportunity which is achieved, and that is some sort of an agreement around the issue. I think we have to take what we are doing today in context, as Duncan pointed out earlier. We have been debating it for 30 years; it has been in the public realm for 20 years, so this is not an aberration. It has almost become part of the tradition. And to seek unanimity is very difficult. For example, in this area there are probably only two things people are unanimous upon: that the Blue Jays win the pennant and Mulroney gets defeated in the next election.

**Mr Fletcher:** You might be right on both counts.

**Mr Carr:** Two majorities—a lot of people have thought that for a lot of years. I do not know.

**Mr Wilson:** Do you agree?

**Mr Carr:** I do not know who we should be betting on. He seems to keep surviving. Go ahead, Dianne.

**The Chair:** Unfortunately we are out of time.

**Mrs Cunningham:** Sorry, I cannot ask you any questions, we have run out of time.

**Mr Wilson:** When I am in London next I would be pleased to drop in on you.

**Mrs Cunningham:** That would be great.

**Mr Kormos:** Very quickly, because there are other people who want to talk to you, let me lay a little bit of background to what I am going to ask you. Obviously I am a New Democrat and I am proud as I ever could be about the Premier's commitment to a common pause day. Unlike a lot of my colleagues I had the pleasure of serving in the opposition, albeit for two brief years, and the pleasure of participating in the debate on the last government's Sunday shopping legislation.

I am only a backbencher, but I have concerns about the fact that local optioning was a great concern to us then. I have listened carefully to every presentation to this committee and I am not aware of a single labour organization that has not said, when asked to indicate what it really feels is going to carry this common pause day issue to fruition, “No, what we need is...,” as you, I believe, indicated, “What we need is a provincial body doing the determination of what is exempt and what isn't exempt, otherwise you get checkerboarding.” I still have those concerns and I appreciate your amendments and I acknowledge that your amendments strengthen the legislation as it is presented in the bill.

Am I wrong in pressing, as I anticipate I will, for tougher tourism regulations and for a provincial level of determination of exemptions in view of all. I was on city council for three years and I know the types of pressures city councillors can find themselves under. Am I wrong in pressing for that?

**Mr Wilson:** First, let me respond at the municipal level. I think most mayors and municipalities quite frankly do not want to have to make the decision. In border cities



it gets clouded up with the cross-border shopping issue and becomes skewered in different ways.

My personal view, and I think the view of the majority of those people I speak for, would be that we believe, if all those people involved in this issue which has been debated for 20-odd years in the public ground, if all the stakeholders were assembled in a room, they could come to a set of criteria which all could agree and we could all operate under. That would, by extension, in my view, lead me to the conclusion that this matter is far better dealt with by a tourist exemption board at the provincial level.

**Mr Morrow:** Thank you very much, Brother Wilson, for coming to Hamilton today. I really appreciate that, being the local member. I cannot think of anybody else to pose this question to, being the expert you are in the labour movement. Under the previous flawed Liberal legislation that we all know you could fly a 747 through—

**Mrs Cunningham:** It used to be a Mack truck.

**Mr Wilson:** He is concerned about the erosion of the manufacturing base in the province under the trade agreement.

**Mr Morrow:** We obviously understand that, according to Mr Sorbara, the Ministry of Labour had only 15 complaints. Can you please explain to the fine people up here what it takes to actually get a complaint to the Ministry of Labour and actually how serious that is at that point?

**Mr Wilson:** I think it would suffice to say, Mr Morrow, that it is a very arduous process. The members of the committee should put their minds inside that of workers in the retail sector, who most commonly are women, often are immigrant workers or from visible minority groups, who are now confronted with the situation of challenging the authority in the workplace administered by whoever from the employer's side, the employer directly as a manager, or the employer as an owner. It takes quite a bit of courage for an individual, I would think, in that situation—remembering the discussion usually takes place on the employer's turf which is the workplace—to rise to that occasion, to want to follow through, and then having gone through, to approach the employment standards branch.

I am not sure what the backlog is now, but I know we have constantly been complaining about the time it takes from the initiation to the conclusion of complaints that workers raise. There is a whole process where, first of all, it has to be determined if there is a legitimate basis for the complaint. So you have an investigator or a field worker go out in the field and investigate that, then the processes of the parties being interviewed, and then—it gets long and harried.

The problem I have with that whole process is—it is much clearer and fairer, to the employers as well as ourselves, if there is a clear set of rules which say these are your rights and these are your responsibilities. Then there is no question as to whether one has to adhere to that. Does that answer your question?

**Mr Morrow:** That basically answers my question. I just want to thank you for the amendments you have given us, they are very precise. Now I will let Mr Fletcher have his turn.

1000

**Mr Fletcher:** Mr Wilson, thank you for being here today. A lot of people talk about the domino effect when we speak of the municipal responsibility: If this municipality opens, this one will open, and this one. But they do not talk about the domino effect when it comes to people who are working. For example, when the retail sector opens, someone has to supply the retail sector. I know that debate has gone on in the labour movement for a long time, and that always seems to be the missing factor. Everyone talks about the business. What about the employees—

**Mr Wilson:** Mr Fletcher, I can recall a conversation I had about two years ago with what I would call a mid-management person in the banking industry. For obvious reasons I will not identify the person; please accept my word that this discussion took place as it did. This individual was in support of Sunday working. I said, "You should look seriously at the issue because it has the potential to snowball." One of the arguments I had with the previous government was, what requirements will then be set in place, for example, to extend public transportation service, because workers have to get there; what are the provisions going to be for child care, because a number of people involved will require that service on Sunday in the same fashion as they would on Monday or Wednesday or Saturday. I said, "By the way, what we are really arguing here is for the ability of the larger retailers—and I think that has come out in these hearings—to extend their market."

There are only so many dollars to be spent out there by consumers whether it is six days or seven days. This is all, in my view at least, a marketing ploy to capture a greater percentage of the market because, if the larger retailers stay open, it forces the mid range Canadian Tire types, the Idomos, and then it eventually gets to the Home Hardware store in a strip mall. But the Home Hardware operators, I would argue, do not want anything to do with Sunday shopping because they will wind up losing business if they do not open. They know they will lose to Canadian Tire and Canadian Tire knows, if they do not stay open, they are going to lose it to the Bay or to Simpson's or whomever.

I told this person—this is the point I want to make—once we begin to extend those support mechanisms that you have touched upon, if I were a CEO of a bank I would look at my unused capacity within that banking operation, and ask myself why those large buildings downtown, by and large, remain idle on Saturday and Sunday. This person looked at me and said, "I hadn't quite thought about it that way." I do not know whether, in the end, the person's opinion changed or not.

**Mrs Cunningham:** It is the same issue as the door when they say they want everything open but they do not want to—

**Mr Fletcher:** Whose question is this?

**Mr Wilson:** It is a point well taken. I think I will shut up. You guys are helping each other out; you do not need me.

**Mr Fletcher:** Thank you, Mr Wilson.



REGIONAL MUNICIPALITY OF  
HAMILTON-WENTWORTH

**The Chair:** We now have a presentation from the regional municipality of Hamilton-Wentworth: Mr Dave Beck and Ms Helen Bell. We have approximately half an hour which will be divided up between the presentation, which has been distributed, and questions from the committee members.

**Mr Beck:** My name is Dave Beck. I am a solicitor in the legal services department of the regional municipality of Hamilton-Wentworth. I have presented the committee with a brief written submission this morning. I am sorry it could not have been delivered to you earlier. What I would like to do this morning is very quickly make some explanatory comments about the submission to guide you to some of the key concerns which are expressed there.

The comments which I will be offering to the committee are from a very narrow perspective. They will not address the political or social or economic or cultural aspects of the entire subject of the regulation of shopping on Sundays and other holidays, nor will these comments address the merits of the proposed legislation and, in particular, the proposal in the current bill to recognize the principle that holidays should be maintained as common pause days. The reason I will not be addressing those aspects of the issue is not that they are unimportant, but because they are primarily not issues of a legal nature and that is the only role I can play on behalf of the municipality here this morning.

With me is councillor Helen Bell, the chairman of the regional municipality's legislation and reception committee. Councillor Bell will be addressing a wider range of concerns.

As is noted in the submission, our regional council in July passed a resolution stating that it was opposed to the municipal option contained in Bill 115 whereby the regional municipality would be given the responsibility and the authority to pass bylaws to exempt certain businesses in certain geographic areas from the prohibitions in the act. In light of the position our regional council has taken, I will not be suggesting alternative forms of regulation to this committee; I am sure you have heard that from other quarters. Instead, what I will be doing is focusing upon two specific shortcomings of a legal nature which I believe exist in Bill 115.

It is obvious that the entire thrust of Bill 115 is to recognize the principle of the common pause day and to restrict the municipal power to allow Sunday shopping only for the purpose of developing or maintaining tourism. Therefore, the province has presented us with the draft tourist criteria that will be elaborated in a future regulation.

In my personal opinion, this represents a fairly good attempt to try to create some form of standardized, objective criteria which must be satisfied before a municipality can exercise the power the province would delegate to it. I think this addresses one of the key problems with the legislation which existed before 1989 when there were absolutely no tourist criteria. It has been commented that there were abuses of the pre-1989 legislation to allow Sunday opening of businesses that had no real tourist connection.

Nevertheless, in spite of the benefits afforded by the draft criteria, in my opinion, in order to foster a consistent approach around the province among municipalities,

something else is needed. I believe it is essential that a working definition of the terms "tourism" and "tourist" be incorporated in the new legislation. From talking to people in various parts of the province in the municipal sector, I am aware there is a general concern that even with the new draft criteria there is a risk that these could be abused or stretched to unrealistic lengths by municipalities which for whatever reason might wish to exempt businesses that really have no substantial connection with tourism, whatever "tourism" means.

That concern seems to focus on the fear that if one municipality plays fast and loose, so to speak, with the draft criteria, there will be fairly intense pressure on adjoining municipalities to react accordingly. I guess it is what is commonly referred to as the domino effect: that the whole proposed regulatory scheme will begin to collapse if there is some abuse. I think the need for a definition of the terms "tourism" and "tourist" is all the more acute because in subsection 4(8) of the proposed act there is a statement that the decision of the council to pass an exempting bylaw would be final. In a legal sense, to use the word "final" effectively excludes the reviewing authority of the courts in almost all but the most flagrant cases where there was total non-compliance with anything. But using the word "final" is a privative sort of clause that protects the decision of a municipality, which may be based very loosely upon the application of those criteria.

1010

I guess the objection might be made that tourism is a very difficult concept to define but, on the other hand, when we are dealing with hundreds of municipalities across the province, each of which might have its own idea of what "tourism" means, or segments of its community that believe that different types of activities constitute tourism, in my opinion an attempt has to be made to define that term. A lot of concepts are difficult to define, but I think this is one that cries out for definition.

The second problem which I perceive in the draft legislation relates to the nature of the consultative process by which municipalities would proceed to enact bylaws permitting Sunday shopping, upon the application of interested businesses. My concern here turns upon one word in the proposed subsection 4(6). That is the word "hearing." As you may be aware, the use of the word "hearing" in all likelihood will attract all the legal rights and safeguards that are contained in the Statutory Powers Procedure Act, which applies to all other statutory decision-making bodies. That would mean there would in all likelihood be a right for every person who appears before a municipal council to call witnesses, to examine them, to cross-examine other witnesses, to call sworn evidence, to get into points of legal procedure which in my view are unnecessary and which would destroy the process of exercising the municipal option.

In essence, what the province is attempting to do, I believe, is to delegate a limited amount of legislative authority to municipal councils. I do not think the province really intended to turn the process of passing a bylaw to say that this geographic area has tourist characteristics, into a long, complicated, expensive, quasi-judicial hearing. I think that is unnecessary and it is unrealistic to place that



burden on municipal councils which have such a wide range of other functions.

Therefore, my closing suggestion to this committee is that the goals of the legislation, if it is eventually enacted with the municipal option, could better be accomplished by reverting to the requirement that a public meeting be held before the passage of any municipal bylaw. That is the current procedure. Our council has exercised the procedure of the public meeting very recently. It has provided an opportunity for people to appear if they choose without getting into all the legal technicalities.

In conclusion, from a narrow legal perspective, those are two issues which I would ask the standing committee to consider. Thank you.

**Mrs Bell:** Mr Chairman, members of the committee, my name is Helen Bell. I am mayor of one of the local townships, the township of Glanbrook, which also makes me a member of the regional municipality of Hamilton-Wentworth council. As Dave has already indicated, I am chairman of that council's legislation and reception committee, the committee that would be dealing with any applications for exemption if the municipal option remains intact in the legislation, the committee that would be chairing the quasi-judicial hearing that Dave has already referred to. Initially I just want to reinforce Dave's comments with respect to that. I very firmly believe that the intent was to provide for a public meeting, not a hearing, so I hope that recommendation will be taken back and an appropriate amendment to the amendment will be introduced.

My comments mainly will come from a more political perspective. I do apologize for not having an opportunity to prepare a document to be circulated beforehand. Furthermore, I have to admit at the outset that we did not have time to go through the process in order to get council endorsement of the comments I am going to make, so that while I hope I reflect a position that is valid within this municipality and is validated by my own experience and credentials, I do have to acknowledge that the opinions expressed here are my own.

The history of this particular piece of legislation goes way back to 1845 and it has been discriminatory from the outset. We accepted that sort of thing back then. We promoted Sunday religious activities; Sunday excursions were prohibited. I have the chronology here and I am sure you are all familiar with it. Eventually, in this day and age, we now have a Charter of Rights. We have rights guaranteed in the Constitution, and this kind of thing is totally unacceptable in this day and age.

That being the case, I think the question is, where do we go from here? I think an attempt has been made to try to create the same provisions, the same regulations, the same control within the framework of new phraseology, new words: "common pause day," this sort of thing. We do not refer to the religion any more. It is a common pause day. I have yet to see a sociological study that supports the merits of a common pause day as opposed to other social needs, so I think that is something that needs to be taken into consideration.

The position of subsection 4(6), which provides for the hearing, is also discriminatory the way it stands, I feel, be-

cause it provides an opportunity for opponents to an application to appeal a council decision if it ends up being favourable, but does not provide the applicant with an opportunity to appeal a negative decision. I think that is discriminatory, I think it is unfair and I think it should be changed.

Mr Beck has already pointed out the perils of trying to define "tourism" and "tourist." From a political point of view—and I am sure you are all realizing it as you go across the province—I think the local perceptions are as diverse as the communities, and in fact as the people. I think to try to encapsulate it in a definition is going to be an exercise that is very frustrating for you and for the writers of this legislation and one that is fraught with peril, particularly if we are going to come up with a definition that can be administered equally and fairly across this entire province. You as the standing committee on the administration of justice have got to be very much concerned with these kinds of impacts that are found within your legislation.

To recognize tourism only in traditional terms is to do an extreme disservice, in my opinion, to the economic realities of the 1990s and to the social realities of the 1990s. Tourism has changed. On the way down here, I heard an Ontario ad promoting a couple of days' getaway—two, three days. "You can't get away for a week or two weeks—your boss won't let you go—so come on to the tourist areas for a couple of days."

This whole concept of "tourism" is changing, and in fact has changed. Day trips, weekend—leisure activities are no longer squished into a one- or two-week marathon. They are infinitely more varied, and tourists respond to many things beyond the traditional attractions. We know what Canada's Wonderland and CNE and some of these attractions are, and we have many fine attractions right in this municipality. And there are people looking for other things, things that relate to their own personal hobbies such as model airplane flying. They have clubs and they have meets. This is all tourism. How are you going to get that into a definition?

Furthermore, off-peak travel is becoming more and more attractive to those who can arrange and organize their own time. They want to avoid traffic, they want to avoid the crowds, so consequently they go at offbeat, odd times and enjoy a beach when it is frozen in the middle of winter, for instance. This is erasing the seasonality aspect of tourism and is changing many, many tourist activities.

Whether we like it or not, one of those tourist activities that is taking a bigger and bigger niche in the tourism industry is shopping. We are aware of it here in Ontario, particularly in this area, because of the cross-border shopping. The phenomenon has been attributed to all sorts of factors. Personally, I think people simply like to go shopping. Sociologically, shopping is a whole different activity these days. People go all together. They take the whole day. They go at their leisure. They shop for this and that. Perhaps they combine it with a meal out, a movie or some other special kind of attraction.

We all experienced it to some extent during the nine-month hiatus between the time when the Ontario courts struck down the Liberal legislation and a subsequent court reinstated it. During that time, chaos did not develop, the



world did not come apart, and I think some of us began to think that maybe we liked what was happening out there. I sense a very, very strong change of public opinion and I think it is reflected in these changing sociological impacts.

1020

We will have an opportunity to see whether cross-border shopping declines. For instance, there has been a new study—perhaps you read about it—indicating that the savings are not as great as thought. There is also a move to collect provincial sales tax and GST at the border, so that will further decrease the savings. It will be interesting to see, when all those things come into place, whether cross-border shopping declines or whether it has become something that people just simply like to do.

Adding to the problems of defining tourism, there is the other phrase, “development of tourism,” which can have even greater ramifications. Overall, I have a great concern that the Retail Business Holidays Act, as amended, may not encourage objective decision-making, fair practice and justice. In other words, it may encourage more specific kinds of discrimination and abuse. As proposed, the interpretation of the tourism criteria is too loose, open to subjective and arbitrary ruling. This abuse could tend to very broad interpretations or to very restrictive ones, certainly not leading to a provincial standard.

Council decisions are final. That worries me very much because it leaves councils vulnerable to the kinds of pressures that I think have been alluded to and that we all refer to as “lobbying.” I think there is a possibility for that kind of pressure to go even further. When there is no recourse to appeal, I think other, more serious kinds of abuse may be developed. There will be a pressure for that sort of thing to happen.

Third, if council is not obliged to grant an exemption even if the tourism criteria are met, and the applicant has no recourse, I have to ask: Is this just? Is this the administration of justice across the province of Ontario?

There is a feeling about some of these provisions that really serious abuses of power could occur. As a combined result of the looseness of language and the looseness of definitions, and the authority that is vested in councils without customary checks and balances, I think we are open to some undesirable things.

I just want to refer to the same kind of lack of checks and balances that exists, in my opinion, in section 39f, which is one of the amendments to the Employment Standards Act: the provision that the powers to arbitrate are given to an employment standards officer, and that if there is a problem with that, it then is appealed to a referee. It is my understanding that these are individuals, not a judicial body, and I am very suspicious of that kind of arbitration.

Philosophically, however, I strongly agree and I strongly support the legislation that is designed to protect the rights of the employees, as the amendments to the Employment Standards Act do. However, on that subject, regardless of all other considerations, I believe those amendments should be strengthened. I believe they should be revised and reworded so that they stand alone, so that whatever happens to the Retail Business Holidays Act, these provisions are still protected.

The amendments refer to definitions that are found in the Retail Business Holidays Act. If future Supreme Courts create more of a roller-coaster history for this particular piece of legislation, then I think these provisions are in danger of being knocked down as well. I think they should be revised so that the appropriate definitions and all of the considerations are found right in the Employment Standards Act.

I strongly believe in a pause day. Whether or not it can realistically become a common pause day, I have some very serious questions. However, these are issues you have heard about from other speakers and ones I am sure you will be debating at great length.

In summary, I do hope this committee will recommend to the Solicitor General that this legislation be proceeded with using extreme caution. By all means protect the employees. I think that is necessary. I think the speaker who was here previous to Dave and myself made that point abundantly clear, and I wholeheartedly agree with much of what was said in that context. But I think some attention has to be given through this and any other piece of legislation to protect the rights of the other side as well; in this case, the rights of the employers. It is important that an economic situation be created in this province that will encourage initiatives, that will get the machine and the engines rolling again. I suspect that this kind of legislation—restrictive, as I read it—is not the means to do so.

Thank you, Mr Chairman. I believe that completes my comments. I have tried to keep away from lobbying and subjective points of view as much as possible. I wish you luck in your deliberations.

**The Chair:** Thank you, Mayor Bell. We have only time for one question per caucus.

**Mr Daigeler:** Thank you for presenting the viewpoint of either yourself or the region; I am not quite clear. If I understand right, Mrs Bell, your own view is that businesses should basically be able to decide on their own whether they should stay open or closed. If that is your view, has that been the view of regional council of Hamilton-Wentworth in the past?

**Mrs Bell:** To answer your second part first, no, I do not believe it has. In conjunction with our own hours-control bylaws, there has been a great deal of debate, and Sunday shopping has always been brought into it. I believe until a year ago, let's say, the consensus would have been to continue the kinds of regulations that were contained in the old Retail Business Holidays Act.

I believe that is changing, and I believe the proof of that may be forthcoming. You may be aware that this municipality has asked area municipalities to put the question, “Do you want or do you not want Sunday shopping?” on their local ballot. Two municipalities so far have agreed to do so. One has declined to do so, and the other three will be making decisions early in December.

**Mr Daigeler:** And in answer to my first question, you yourself are in favour of business making the decision?

**Mrs Bell:** I believe, yes, that was experienced during the nine months.



**Mr Carr:** Thank you very much for the presentation. I was wondering what you see happening if the law remains the same, what your best guess is, knowing the council and its feelings and the feelings of the public. If this law remains as it is, what do you see happening a year, two years down the road? Will there be Sunday shopping in Hamilton-Wentworth?

**Mrs Bell:** That is a loaded question politically.

**Mr Carr:** That is why I asked a politician.

**Mrs Bell:** The formal position at the moment is that the municipality opposes the municipal option. That being the case, the municipality may well decline to act on any applications. I believe that in the area, the trend is toward permitting Sunday shopping. Whether it will happen within a year or two years may be doubtful. It may take a little longer than that, but I think it will happen, yes.

**Mr Morrow:** Your worship, thank you for presenting. What a fine leader you are, and you do the people of Glanbrook real proud.

**Mrs Bell:** Thank you.

Interjections.

**Mr Morrow:** Well, she is one of my mayors.

**Mrs Bell:** He has to say that.

**Mr Morrow:** I am going to talk about a study, and then I want to ask you about the plebiscite that Hamilton is having. We know from a study that 57% of the people in Ontario want to shop on Sunday, but if you flip that study, we also know that over 75% of the people in Ontario do not want to work on Sunday.

In saying that, I want to move to the plebiscite. Hamilton is having a plebiscite, to my understanding, and the question is, "Do you want to shop on Sunday?" Keeping in mind the study that I just have given you, would it not make sense to put on that plebiscite, "Do you want to work on Sunday?"

**Mrs Bell:** I think the decision was to keep the question as simple as possible. The issue is whether one wishes to shop or not shop on a Sunday. In terms of whether you want to work on a Sunday, given the chance, quite plainly we would all say no to working any time, would we not? I think an important question, and I do not know whether your study addressed it, is a look at the overall population. How many people already do work on a Sunday? You know, the transportation, the essential services. There are so many facilities that do operate. Industry of course has always had shift work, in my memory. There is a very large percentage of people—union members, I might say—who already do work on a Sunday. I am just wondering how objective and how fair that study is. I would have to see it in order to answer.

1030

UNITED STEELWORKERS OF AMERICA,  
LOCAL 1005  
MARVIN CAPLAN

**The Chair:** We now have a presentation from the United Steelworkers of America, Local 1005, Bob Sutton and Marvin Caplan.

**Mr Sutton:** I am Bob Sutton. I am chairman of Local 1005's political action committee. With me is a friend, Marvin Caplan from Caplan's Men's Clothes.

**The Chair:** We have approximately half an hour, part of that time of course for your presentation. Please leave some time for the committee members who I am sure will have many questions for you.

**Mr Sutton:** My intention is to give a short brief. I will not be reading this; I will just be highlighting it. Mr Caplan is going to be giving a view from the retail industry in Hamilton. Then we are going to have the questions jointly.

We would like to start by saying Local 1005, which represents almost 7,000 workers at Stelco's Hilton works in Hamilton, is pleased to have this opportunity. We would like to address the following points: Sunday working, higher prices caused by longer store hours, employment levels, cross-border shopping, protection for workers who refuse to work Sunday and a couple of things on the proposed legislation.

I would like to point out that at Local 1005, being in the steel industry, there are a great number of people who have to work Sundays. I would estimate somewhere probably around 35% of the plant is working Sundays, not on a continual basis but most Sundays. None of these people, or very few, want to work Sundays. As a matter of fact, in a lot of areas people take a lower-paying job to get themselves on a weekend-off schedule.

In the department I am in, electrical, we have just, in the last set of negotiations last November, negotiated preferred schedules and preferred days off for senior employees. We have about 40 grievances in by senior men saying they are being forced to work weekends while junior men have weekends off. This is partially because some of the senior men have greater skills and the company says, "We need your skills on Sunday." This is the sort of thing that is happening. Guys who are senior want those Sundays off with their families. In other cases, as I said, guys are applying for lower-paying jobs in order to get off shifts and especially off weekends. A lot of people want to work three shifts with weekends off. That is one of the more popular schedules.

The other thing I would like to point out is, there is no doubt that if the stores open Sundays they are going to have more overhead. The way I see it, people who work at Stelco have a certain amount of money they spend; we will say \$100 a week. If that is spread over seven days rather than six, they are still only going to spend the \$100. It is kind of hard to spend \$120 when you only have \$100 indefinitely. So the longer hours are not going to increase the retail sales. The sales are going to average out eventually and we are going to end up paying higher prices because of the higher overhead for that Sunday opening.

It is not going to increase employment levels, in our opinion, because it did not during the few months that stores were opened on Sundays in Hamilton. All it does is average out the number of employees. Employees find themselves with Tuesday and Wednesday off instead of Sunday and Monday. It is just going to average the level of employees. You are going to find that if you walk into the



stores, they are going to be like a ghost town on the weekdays and there will be a salesperson here or there to help you on Sunday. I do not think there will be any increase in employment. If it does, it is going to result in higher prices.

The other point we wanted to bring up was cross-border shopping. I feel this is more of a problem than Sunday shopping. If you sit at a lunch table anywhere in the steel company, there will be one or two people talking about the bargains they got shopping in Buffalo. The reason people are shopping in Buffalo is because of the lower prices. It has nothing to do with whether the stores are open Sunday, Saturday or 24 hours a day. People leave Hamilton, drive to Buffalo and shop because it is cheaper. The first thing they do as they get across the border is they fill their gas tank up with gas. That pays for the entire trip. They get to Hamilton and they have still got more gas than when they started. They are going over there and their trip is paid for on the gasoline savings. They are taking their family out for dinner. They are paying for the dinner with the savings they have got.

There are a lot of reasons for it. I have listed them here in the brief: lower prices by economy of scale, higher volumes, lower profit margins etc, lower taxes, the gasoline, the high value of the Canadian dollar, the reduced duties they are paying on US-made goods. I think part of the trade deal allows people to bring back these American goods. I think the customs people, with the crowds, are enforcing the act less. They are ignoring collection of duties and taxes. One of the biggest reasons now is that people are going over there and not paying the goods and services tax. People are taking advantage of this because they are going to have to watch their dollars more. If they can go over there and buy stuff cheaper, they are going to be doing it. As I said, it is not an argument for Sunday shopping. Cross-border shopping is a totally different issue. People are going there strictly to save money, not because the stores are opened Sundays.

In the legislation there is a piece about protection for workers who are refusing to work Sundays. That is a joke. The labour standards people are having trouble enforcing the acts they have got now. We had a case in the plant where guys were working 80- and 90-hour weeks a few years ago. We contacted the employment standards people. I was down there weekly trying to get them to monitor Stelco's hours. It does not work. It took three or four warnings to the company. They monitored hours in certain departments. They had charged five workers and they had 27 charges against Stelco. It was all thrown out of court two years afterwards. It took years to get through and the only thing that resolved the excessive hours that were being worked—and I add as well that people were on layoff—was the fact that there is a bit of a recession and the need is not there any more.

If things start to boom again, we are going to have the same fight with excessive hours of overtime, and if the ministry cannot legislate the hours and enforce the hours in Stelco, it is sure not going to be able to protect some person working in the retail industry who is being told, "You either work Sundays or we are going to reduce your

hours and let you go." That is what is going to happen. It is not going to work.

1040

The other thing our members really recognize is that it is nice to have a Sunday off with their families. As I said, the most popular days off are Saturday and Sunday; if not Saturday and Sunday, Sunday and Monday. Sunday is the important day off with your family. Saturday is a busy day. For people who are home on Saturday that is when they run and do their shopping. That is when they go to the show and do all of the active things. Sunday is the day they spend at home, go and visit relatives; that is the time with their family. That is why people at Stelco want Sundays off, and they are no different from people in the retail industry. It is a big push. As I said, guys are taking jobs paying less—and I am talking \$1,000 to \$2,000 a year—in order to have these days off. It is going to be rather ironic when an employee who works at Stelco for 25 or 30 years and finally gets enough seniority to get himself on a schedule that gives him Sunday off, comes home and finds his wife all of a sudden is being told she has to work Sunday, or his teenage kids all of a sudden find themselves having to work Sundays at their jobs.

People who were up ahead of us talked about the domino effect. This is what happened in Hamilton a few years ago, with store openings on Mondays, Tuesdays, and Wednesdays. In Hamilton stores were opened Thursday and Friday until 9. In Burlington, the stores started opening Monday to Friday until nine, I think Saturdays as well. The first thing that happened was there were ads in the Hamilton Spectator, there were ads on the radio station: "Come on out to beautiful Burlington and do your shopping. We are open Monday, Tuesday and Wednesday until 9." Whether there was any amount of people travelling to Burlington to do their shopping or not did not matter.

The stores in Hamilton then looked at the situation and realized there was a potential to lose sales. I will put this back to where everybody has \$100 a week to spend in stores. They were afraid that some of that \$100 a week was going to be spent elsewhere. The fear of losing that money to the competition caused the stores in Hamilton to open Monday to Friday until 9. If you went into Canadian Tire at the Centre Mall, it was like a ghost town on the early weekdays. There was nobody there. However, they remained open. I am sure we paid for it with higher prices.

The same thing is going to happen on Sunday. If Burlington chooses to be an area that, because of tourism, should be open Sunday, then the stores in Hamilton, under that fear, are going to start pushing this city council to allow them to open Sundays as well, not because they want to but because they will feel they have to because they will lose the business to Burlington or other neighbouring communities. It is the domino effect and we are not going to be able to beat that. That is what is going to happen. It happened already with the Monday, Tuesday and Wednesday openings. All it is going to do is put the prices up higher and there will be more people going to shop in Buffalo.

As I said, I would like to conclude this by pointing out again that our members are not going to be very pleased



when they finally get their weekends off, go to spend them with their families and find that their wife and kids have to work Sundays in the retail industry.

**Mr Caplan:** My name is Marvin Caplan. I am the proprietor of two clothing stores. One, for most purposes, should be considered a street store. That shop is located in Hamilton. The other store is located in Maplevue Shopping Centre in Burlington, which is a major regional mall. I was formerly operations manager for the Harry Rosen division of Dylex. I am a founding member of Hamilton's first business improvement area. I was a member of its executive. I am currently the president of the Social Planning and Research Council of Hamilton and District. I will tell you, however, that I am speaking for myself.

I hope you do not consider me boastful if I suggest to you that if you had an expert in here on the issue of Sunday shopping, he is in front of you, both on the economics of retailing and the social fabric of our communities. Let me sympathize with you first of all. I do not envy you your difficult task because I understand this issue is not black and white, and I think any reasonable person, after examining all of the arguments, would choose to severely limit Sunday shopping. Unfortunately, the electorate will not have the time or the desire to dispassionately examine all of the arguments.

My personal finances would be improved if Sunday shopping were to be reinstituted. You see, in Burlington I, like most shopping centre store owners, would be open and my competition on the streets of Burlington would be closed. My downtown Hamilton store would be closed as would my downtown Hamilton competition. One of the most illuminating ways, and for me the most critical way, of examining this issue of Sunday shopping is who wins and who loses. Before I discuss winners and losers, I want to make reference to the people who pay our bills—our customers. The time allowed precludes my discussing the relative advantages and disadvantages to the consumer, but there are some obvious advantages of convenience and availability. However, the disadvantages are more subtle and less easy to clearly enunciate. They include lower levels of service and, ultimately, less choice.

I believe that with wide-open Sunday shopping the winners are the powerful and rich, the losers are the small and weak. The strong need justice too, but they can afford it. You as legislators are charged with protecting those who need protection. It was interesting. Helen Bell just spoke to you and said that during the period when Sunday shopping was permitted there were no problems, and that the consumer was better served and society progressed as it should.

What you were not told is no one I know was open, no one I know as a competitor, no one I know who sat on the board of the BIA of Hamilton, no one who helped me with fund-raising for Ronald McDonald House, no one who is involved with the social planning and research council, no one who leads a club or a scout pack, nobody from a church group, nobody from a social agency. The only stores that chose to be open were those that were chain stores and located in shopping centres.

You see, the people who win financially with Sunday shopping, by and large, are not from here. They are from

Toronto. Not only do the people who run the chains and department stores live and have their head offices in Toronto, they hire their lawyers and their accountants there. They buy their supplies there. They give their money to charity there, as well as donating their leadership and volunteer work there. I oppose Sunday shopping because it hurts my fellow retailers in Hamilton who line the streets of my town. To a large extent, we retailers add to the flavour and texture of a community. Faceless shopping centres filled with the same chain stores from Halifax to Vancouver take people off the streets of our communities and that effect is compounded by Sunday shopping.

As an independent retailer, let me say that extended hours are difficult in our over-stored world. We all exist as retailers to satisfy the desires of our customers. In the bad old days before shopping centres, we somehow managed to satisfy all of our customers' needs for clothing, appliances and food in six days. If wide-open Sunday shopping is allowed, the winners will be shopping centres, department stores and chain stores. The losers will be the independent storekeepers who serve our communities as volunteers, aldermen, board members of community organizations and, yes, political organizers. They are the ones who suffer.

For me the issue is simple. A major purpose of government is to protect those who need protection. The small storekeeper needs your help and protection, not for advantage, just for the ability to compete on a level playing field. Our single greatest advantage, our single greatest competitive edge over chains and department stores is we are in our own shops. Is restricting our work week to 60 hours too much to ask?

I am here at the behest of labour. From the point of view of my employees, let me tell you that any proposed legislation protecting the rights of retail workers on Sunday is baloney. If Sunday shopping is allowed the economic reality is my store in Maplevue will be open and I will not hire anyone who cannot or will not work on Sundays. And if anyone wants to be in a senior position with my firm, he or she will have to be willing to work on Sundays. This is what I have to put up with. I get emotional about this one because you are putting me in the position of making myself not a very nice person. Okay, if you want to work for me, you are going to have to work Sundays.

There is another trend that is very difficult for independent retailers but it happens. It is to the benefit of chain stores and department stores: you replace full-time workers with part-timers. The people who are supposedly most served by Sunday shopping, working mothers, are the same people who are most harmed by Sunday shopping. Retail jobs have a tendency to be entry level, low paying and low skill, and unfortunately, to some extent, disproportionately occupied by women. If Sunday shopping is allowed, you will often force women to choose between their families and their work in the only time they have together.

After a great deal of consideration, I want to present you with an idea. The people who are asking you for Sunday shopping, by and large, from an economic point of view, are chain stores and department stores. Those are the very people who, I believe, are the people who do not need it.



The few independent stores that want to choose to stay open, I have no problem with them. I do have a problem with restriction. I am a businessman. I do not need more red tape in my life.

If you are going to restrict Sunday shopping, one of the things you must restrict is shopping centres and people who employ more than three or four people. If somebody wants to have a mom-and-pop store, open their own independent business and be open, I have no problem with that. I tell you, this is not a black-and-white issue, it is a complicated one. I have no problem with somebody wanting to stay open to serve his customers. I think what you do, by allowing small stores to stay open on Sundays, is create more employment in our communities. But you decrease employment by having wide-open Sundays. Because you harm the people in smaller communities around our province who are the people who really are driving the engine of the economy.

Everyone is downsizing. And the only people who are creating jobs are small business. I have created, on a percentage basis, a lot more jobs than Stelco has since I started. And people like me. You are caught between a rock and a hard place.

Sunday shopping is onerous on small business. It is to the advantage of big business and chains. For those MPPs who are not from Toronto, I would suggest to you that it is more important to keep the guys on the streets open than it is to put money in the pockets of Dylex or Eaton's.

[Interruption]

1050

**The Chair:** That is certainly an unusual occurrence. Obviously an indication of how well—

**Interjection:** And out of order of course.

**The Chair:** Obviously a really strong response to your excellent presentation.

**Mr Daigeler:** I would like to ask the union representative: in your brief, you state quite forcefully that it is impossible for this province to pass any legislation to protect workers who do not wish to work Sundays. Workers who will refuse to work Sundays will simply see their hours reduced to a level that is unlivable and non-existent. At the same time, you are coming from an industry that has had Sunday working. What has been the experience there? Are the workers there being pushed around or discriminated against? How does it work there?

**Mr Sutton:** If you work in the steel industry, when you are hired, you are probably going to work Sundays. I personally have worked in the steel industry 25 years and have probably worked about 50 Sundays in those 25 years—not even once a month, maybe once every two or three months. But I am more fortunate because of my trade. However, there are a lot of people who have had 25 years of working continually on Sundays. The first thing—

**Mr Daigeler:** Continually Sundays, you said? Every Sunday?

**Mr Sutton:** There are a lot of schedules where people work steady Tuesday, Wednesday off, Wednesday, Thursday, and that is it for 25 years. But their goal is when they

get enough seniority to apply for a job posting that permits them to have weekends off. They jump at it. Even if they drop a buck or two an hour in order to do that.

Once they get to that Sunday, Monday off schedule or Saturday, Sunday off, we have tried to create rotating schedules. The senior people who finally get those weekends off say: "Hey, I don't want a rotating schedule. I've put in my dues. I have worked weekends for 25 years. I am not going to share and work one every six or one every seven weeks for this other guy. I've had my 25 years of working weekends." It is a big fight. Guys fight in the showers over the days off. I am not kidding. It is a serious situation.

That is why in my department we have had a piece about senior men having preferred schedules for only eight months now. We have 40 grievances sitting waiting to go to arbitration on the senior men being denied this preferred schedule. People do not want to work Sundays there, but they do not have the option.

When I say that we will not be able to legislate protection for workers, it is obvious. If you are a part-time worker and you refuse to work Sunday, the store has to be open anyway. They are going to put somebody else in on that Sunday. They are slowly going to give you less and less hours because most of the retail is part-time. Eventually, you are not going to be working there. They are only going to have hire people who will work Sundays, the same as they do at Stelco.

**Mrs Cunningham:** I want to tell both of you that you have made excellent presentations. It is rather refreshing, as a member of this committee, to hear people who are out there on the front lines talking about the real world and how it is. I think our responsibility is to stand up for what we believe in, as politicians and as government, and if you are going to support a common pause day, then do it. I am happy to see you saying that this legislation does not support a common pause day, because I believe you are right on that.

On the other hand, we are caught in the middle. We are hearing more and more people who are coming forth and saying, "Let the marketplace decide." It is that simple. Mr Caplan, I can see you are getting excited. Your presentation was absolutely excellent. I agree with everything you are saying, both of you. And the amendment you have suggested we put forth. This is my third round of public hearings on this, and I am telling you, and I want you to respond to this, that we are getting a different kind of presentation this time around. Something is taking over in this province. Maybe it is big business. Maybe it is people who do not care about the rights of individuals.

You are absolutely right in telling us that we have the responsibility to protect people who cannot protect themselves. I do not know why in Canada and in Ontario especially we do not stand up for our way of life, which has been a common pause day. I am very unpopular saying that, I will tell you that.

**Mr Caplan:** Popular with us.

**Mrs Cunningham:** No, I am very unpopular. It is not the trend these days to stand up for what you believe in in politics, because people might not vote for you. In my case I get to stay home and make dinner and play tennis and



have lunch with my friends, so I am not very worried about it; but I will say that it is not the trend to stand up for what you two have stood up for today in these hearings. I am saying on behalf of the new members, it is a totally different presentation that we are hearing.

**Mr Caplan:** May I say something? If wide-open Sunday shopping comes back, what you are telling me, who tries to be a nice guy, is that I am going to be put in the position of telling people that they must work on Sundays against the law, because I have no choice. The economic reality is if Sunday shopping comes I am going to be open and my employees are going to have to work. You do not have to do that, you do not have to stand there with my employee if this happens. I have to do that, it is my guts that churn when I talk to people about the hours they have to work.

It seems to me that you have hit a nerve that I have been talking about in one of my other hats as the president of the social planning and research council. We have in fact been comparing ourselves to something obnoxious. We are looking at the liberty of the United States and we do not look at the lack of freedom, supposedly, in that country. We are looking at streets that are boarded up, we are looking at poverty, we are looking at a place where the roads are terrible. We are all whining and complaining about our taxes here. I tell you as a businessman, I do not enjoy paying taxes, but when I look at the alternative, I am happy to sign the cheque.

I sell expensive clothing. It costs more than buying in a chain store, but it is worth more. It costs more to be a Canadian, it costs more in taxes to live in the province of Ontario. I tell you as a businessman and as a citizen that it is worth it. One of the problems we have is exactly what you are talking about. We do not stand up and talk about the quality of life that we enjoy in this province; we do not stand up and brag about how wonderful it is here. The kinds of things that made Canada wonderful were social legislation. The kinds of things that we talked about that we were proud about in our community was taking care of each other. So yes, you can let the big guys win every time, and if they win on the strengths of being able to compete with the little guy in the marketplace, that is fine. All we are asking for as small business is a chance to compete on a level playing field. We are asking for a 60- or 70-hour work week. I do not think that is a lot to ask.

When Sunday shopping was allowed, nobody was open and business was done in the shopping centres and chains. So what happened was street stores did less business and chains and shopping centres did more. If you are worried about cross-border shopping, I will tell you that cross-border shopping is not an issue with street stores.

No one goes from Hamilton to shop at Peller and Muir, because Peller and Muir is closed. It is a better men's wear store in Buffalo. It is closed on Sunday. They do not go to a store that has texture to it, they go to a shopping centre, they go to a mall, a discount place. Discount stores are very happy to be open on Sundays, because they have very low levels of service, they pay very low wages. If you want to encourage \$6-an-hour jobs as opposed to \$12-an-hour jobs, if you feel that is the way to strengthen the economy, then Sunday shopping is a good deal. I mean, to

me it does not make sense to trade \$6 for \$12, but that is what Sunday shopping does.

**Mr Morrow:** Thank you very much, fellow steelworker. I just have a couple of really quick questions. Actually it is really nice to see you here, Bob. How many steelworkers are there in Hamilton?

**Mr Sutton:** At Stelco there are just under 7,000 now. There were 13,500 in 1981.

**Mr Morrow:** But we do have an awful lot of smaller locals.

**Mr Sutton:** There are an awful lot of smaller locals. I think we are probably talking about 12,000 or 13,000 all told.

1100

**Mr Morrow:** I just want to make something perfectly clear from your brief. You have stated that steelworkers as a whole are opposed to the municipal option, it is for the birds and does not work.

**Mr Sutton:** That is the opinion of our political action committee, which was a five-member group that sat and debated this. The problem we saw was exactly what I had said with the Monday, Tuesday, Wednesday openings. As soon as one municipality goes for it, then the others feel they have to.

**Mr Caplan:** I might interject that 20% of the workforce, from what I am told, is either in or related to retailing. So that means that one out of every five voters is opposed to Sunday shopping because he or she does not want to work on Sunday.

**Mr Morrow:** So basically what we would need then is some sort of provincial control.

**Mr Sutton:** That is my opinion.

**Mr Fletcher:** First let me say I agree with everything you have said, that in Canada we are different from the United States, and I never want to go and be the same, because I think that is something that makes us distinctive as a country. People recognize that worldwide, that we do have the social programs in place and we are a benevolent country.

As far as what is going on with the municipalities is concerned, and we have been hearing this throughout the province, the municipalities are saying to us, people are saying to us, small retailers: "Don't give us the job; keep it in the province. We don't need this." I am just wondering, do you agree with the possibility of the government setting up a committee of the stakeholders—the unions, the retailers and the different levels of government—to set up the criteria that we can possibly have for a tourist designation. If that is the way it goes? This is only draft legislation, so it is open to change.

**Mr Caplan:** One of the points I would make is, if the president of Cadillac Fairview or Cambridge shopping centres or Dylex wants to phone the Premier or your offices, you are going to pick up the phone much more quickly than if you do not know who Marvin Caplan is, sitting in a store in Hamilton. One of the difficulties is that people with power have power. One of the reasons we have legislatures, one of the reasons we have rules to regulate the



order of society, is to protect those who are weak. If you can assure me—

**Mr Fletcher:** Can I just come in on that? In the throne speech the Premier said we are going to give power to the people who have never had power in this Legislature before. So maybe when they do phone, I will not be picking it up that fast.

**Mrs Cunningham:** Then you are going to have to fix this legislation, Derek.

**Mr Caplan:** I would suggest to you that the issue is, how do you take a complicated issue and solve it so that no one gets hurt or the fewest number of people get hurt? The only solution that I can think of is to have provincial legislation that prohibits shopping centres, chain stores and department stores and people who employ more than four or five people being open. That is the only way I can think of, and I have been thinking about this issue for a great many years.

**The Chair:** I think after this morning's presentations, Mr Caplan, that most of us would probably prefer to listen to you, sir, and know that when we pick up the phone we will have a very stimulating dialogue. Thank you very much for your presentation.

**Mr Sutton:** I just want to say one thing on that. From what Derek was hinting at, you are talking about some kind of an appeal board or something to look at what tourist exemption areas are. That is not as desirable as not having it, but if you read my brief in its entirety, I do mention that, because there is no question that different municipalities are going to take a wide-open attitude, whether they meet the tourist criteria or not. It would be nice, assuming that this is what we end up with, to have some place to appeal to, because let's face it, there are areas that—the beach in winter is not the place, to quote our friend from Glanbrook, who I do not think has any stores anyway.

**Mr Fletcher:** On a point of order, Mr Chair: I need something clarified. It was something that Mr Carr said earlier this morning. Since this is for the public record, I am just wondering if Mr Carr could clarify the point where he said the UFCW was calling this piece of legislation a joke. I was wondering if he could tell me where that was said and who said it.

**Mr Carr:** It was in a written presentation. Susan may have it. I am not sure which day it was. It was in answer to a question, so it would be in Hansard, if you look back. It was on our trip last week, in either Peterborough or Kingston.

**Mr Daigeler:** It was Kingston, I think.

**Mr Carr:** You remember?

**Mr Daigeler:** I think so; yes, it was in Kingston.

**Mr Fletcher:** It was UFCW who called it a joke?

**Mrs Cunningham:** Do you want it four times on Hansard or once?

**Mr Fletcher:** I am not sure if you said the union or UFCW.

**Mr Carr:** Susan, perhaps we could get the exact quote on that. It was in the written presentation too.

#### ONTARIO HOTEL AND MOTEL ASSOCIATION

**The Chair:** We now have a presentation from Mr John Mykytyshyn from the Ontario Hotel and Motel Association. Introduce your colleague as well.

**Mr Mykytyshyn:** This is Pat Sullivan, also with the Ontario Hotel and Motel Association, representing Hamilton and district.

**The Chair:** We have about half of an hour, if you could divide that time between your presentation and an opportunity for the committee members to pose questions.

**Mr Mykytyshyn:** I think the Ontario Hotel and Motel Association across the province has made a presentation to this committee. We are here just to reiterate our position, our feelings, as we represent the hospitality industry, on what opening Sundays means to us.

It is nice to listen to people who say that we should not have Sunday shopping because it should be a common day. If it should be a common day, then it should be a common day for everybody. Why should you have the privilege of going to a restaurant and having a meal prepared for you instead of cooking at home? If we are going to have a common day, then let's have a common day for everybody. Let's close all the restaurants on Sundays as well. Those are also people who have families, but we are saying that they must be open. If they must be open, then let's open it up to all the people.

At the Dundas council last Monday, it came forward that we should ask on our ballot in November whether people want Sunday shopping or whether they do not. We unanimously refused to put that on our ballot. We feel that the responsibility is with the province. We had an election and elected a government and we feel that the government must make a stand, as a provincial body, not a municipal body. I do not think Dundas should be open on Sundays and Ancaster should be closed. I do not think Hamilton should be open on Sundays and Burlington should be closed. If we are going to have legislation, we should have legislation for the province of Ontario, not for the municipalities. I think the responsibility is with the provincial government and that is where the legislation should come from, not the municipalities.

The hospitality industry feels that Sunday shopping means a lot for us to survive, for tourism. We are seeing hundreds of people go across the border. We heard the presentation before us about the small stores, but it is a fact, we see it, every weekend: hundreds and hundreds of cars crossing the border for Sunday shopping. We are losing a lot of business and our people are saying to us: "We need Sunday shopping. We need to be open, because we need to compete." So we cannot be selfish and say, "I do not need it because I am not close to the border." We have to speak on behalf of the members who are close to the border as well.

Do you want to add anything?

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**Mr Sullivan:** The only thing I would add—and again, I am representing the Hamilton and district area, which takes in Burlington, Dundas, Ancaster, Mount Hope, Stoney Creek—is that our industry has been open Sundays



ever since time began. We look after the people who are off on Sundays for the family dinner, and people who do not have families. There are a lot of people who have nothing else to do on a Sunday but go to a restaurant or a bar where they meet; that is their social for the week. Sunday to us is mandatory. There is just no way around it. We are filling a gap for an awful lot of people who have nothing else to do. The feeling of our association is that we must be open on Sundays. If they want to regulate the hours, then that is fine. We have already done that. The bars must be closed by 11 o'clock. That has changed now too, has it not?

**Mr Mykytyshyn:** Yes, it is 1 o'clock.

**Mr Sullivan:** Again, our industry just survives on weekends, Saturdays, Sundays, and there is just no way we can survive without the bars open and restaurants open.

**Mr Mykytyshyn:** I would like to add that we agree that the employees should have the right of refusal to work Sundays. We are not saying that it should be mandatory that if we stay open Sundays they must work Sundays.

**The Chair:** You have concluded your presentation?

**Mr Mykytyshyn:** Yes.

**Mr Daigeler:** Thank you for appearing before us and making your views known. All across the province, different representatives of the tourism industry have strongly argued for letting businesses decide on their own whether they want to stay open. I want to pick up on the last comment you made with regard to letting the employees say whether they want to work on Sunday or not and that it should not be mandatory, that you agree with the right to refuse work on Sunday. How does that work in your industry, based on your own personal experience?

**Mr Mykytyshyn:** In our industry we have people who like working one or two days a week. Sunday is not as busy as Friday or Saturday, and if somebody wants a Sunday off, he or she is given that day off. We do not force anybody to work Sundays. We have never had any problem with filling the shift with people who want to work Sundays. There are people out there who are working, who have no family, who have no other obligations, and they appreciate that they can get a day's work in.

**Mr Sullivan:** In our industry a lot of the people who are working weekends are people who have full-time jobs during the week and are looking for that extra cash for the weekend. Not everybody has that choice. If I am running my business and I need a management person on staff on Sunday, then you do not have a choice. You are hired for that job, and you know that we are open seven days a week, that is all. It is like the steel industry. You do not go into the steel industry and say, "I'm not going to work Sundays." Find another job.

There are a certain number of people who must work Sundays if you are open, and it is just to do with the business; but then most of your part-time and staff like that have a choice, because there are enough part-time out there who wish to work weekends.

**Mr Daigeler:** This, I am sure, is going to be picked up from the other side of this committee. Still, it remains a

little bit contradictory, I think, the testament that I am hearing here. Labour is very—and probably rightfully so—concerned that people will be forced to work on Sunday, despite the best protection possible. Quite frankly, I think what you are saying confirms, perhaps, those fears, that certainly if you are in a management position, from what you are saying, you do not have the option; you will have to work on Sundays. Is that not what you were saying?

**Mr Sullivan:** Yes, as the owner of my business I have to work Sunday too. I do not like it, but that is the way it is. Again, if you are looking after the masses, if I am running an operation I need one manager. That means there is one person who is forced to work that day. The other four or five have an option.

**Mr Daigeler:** Let me ask you a very different question. Is there any effort under way at all in the tourism industry, the restaurant business, to at least allow each restaurant a day to be closed?

**Mr Sullivan:** No, not really. With the economy the way it is—

**Mr Daigeler:** But you are saying yourself you would like Sunday off, but you feel obliged because of business reasons to be open seven days a week.

**Mr Sullivan:** Because of the economy and the tax structure and everything else, we are forced to be open. You have an obligation at the end of the month for all these bills to be paid, and the only way you can do it now, with the economy being the way it is, is to be open seven days a week to get that revenue in. It would be nice to be able to close down for one day, but the hydro bills, the taxes, all the rest of that carries on and it keeps going up, where your sales do not keep going up. So you need that extra time to crack the nut at the end of the month. That is pretty well what it is.

**Mrs Cunningham:** This has been an interesting presentation. My questions to the last delegation were basically because I was intrigued with the fact that they came on so strong as wanting somewhat of a balance in the province. My view was that they did not want wide-open Sunday shopping and that they were unhappy with this legislation because they thought that is what it represented.

I was surprised to hear you say that if there was a common pause day by, perhaps, some restrictions on tourism, either by board or definition, that would allow some parts of the province to be closed if they did not meet this requirement, in that case there would be people who would not work on Sundays. Were you saying that you really thought the restaurants should be closed in those areas as well?

**Mr Mykytyshyn:** That is what I say. If you are going to have mandatory Sunday closure, why would you let the restaurants stay open? Do they not deserve a common rest day?

**Mrs Cunningham:** I just had never heard it before, so I wanted to clarify it. Basically, in Ontario for the last hundred years restaurants have been excluded from the holiday and Sunday legislation, because they were a service industry. I had never heard them come before us and



say that they wanted to be closed, but would it not be true that they could close now if they wanted to? The law just says that you can be open by law, but you would have the choice now and for the last 100 years to close. Restaurants do close. I am just wondering how we can interpret what you want and put it in a viable manner to the government.

**Mr Mykytyshyn:** What we want is we would like to see Sunday shopping so that our people do not go across the border, because we lose a lot of our people. Instead of going to the plaza shopping and going to our local restaurants for dinner, they go to the border and they stay at the border. Not only do they do their grocery shopping across the border; they have their meals there as well, so we are losing a lot of trade.

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We are saying to you that if you are going to have a common day for the store owners you should have a common day for the restaurants as well. We have that privilege, but when we did not have liquor licences in all the restaurants, the liquor establishments were not allowed to open on Sundays. Then the government gave liquor licences to the restaurants and every greasy spoon got a liquor licence and was open on Sundays and the taverns were not allowed to stay open.

The taverns lost a lot of business because they were closed on Sundays. The people went to the greasy spoon on Sunday and they went there on Monday, Tuesday, Wednesday, Thursday and Friday, for the rest of the week. We fought and fought and we finally got the legislation changed so that the taverns could stay open as long as they provided food. So now every tavern provides food and we are competitive with the restaurants now. We are saying the same thing to you here: that we want to be on a fair, competitive basis with our American neighbours.

**Mrs Cunningham:** I think the emphasis that you have put, in fairness, is on the cross-border shopping issue. Most of the delegations that have come before the committee have assured us that we should not try, in enacting this legislation, to relate the two. I would say at least 90% have said that. In reading the briefs in preparation for the two days I have been here certainly that is my understanding, but you work in the business and you are saying they go.

Perhaps when the taxes are collected at the border we may see people not going as frequently, because they assure us that they go to save money. When people have to take the extra money out of their pocket and pay it, maybe that will help a little bit. It will be interesting to see what kind of phenomenon we are facing later on, but in the meantime, I think it is our committee's responsibility to come up with a recommendation for improvement to the existing bill.

One of them would be, in my view, this tourist board that takes a look at the tourist areas, so that they can, in a very broad definition, remain open, because we are being told that we want to be competitive in Ontario. I am wondering if you have given any thought, as a restaurant association, to that as being helpful, meaning a provincial body, the responsibility being with the province, so that we can address the issue of fairness, which is one of the points

you made early on, the fairness issue. I am wondering if you gave that any thought.

**Mr Mykytyshyn:** I will say to you what I said a second ago. If they say that St Catharines is a tourist area and you allow St Catharines to stay open, the people who have restaurants in Beamsville and Grimsby, if they are closed, are going to potentially lose a lot of their clientele, because if the people go into St Catharines for dinner on Sundays, because they are shopping there, there is the potential of losing that business through the week.

**Mrs Cunningham:** I see you are relating the shopping.

**Mr Mykytyshyn:** How do you close Hamilton down and allow Burlington to stay open?

**Mr Sullivan:** I think one of the other reasons we are here is that, as you said earlier, certain parts of our industry have been for 100 years open Sundays. Now it is almost wide open: all open on Sundays and allowed to operate on Sundays. Where are you heading? Are we going to be included in the Sunday shopping legislation? This was our concern: All of a sudden are we going to, if this government decides that Sunday is going to be closed, be under that same legislation? That is what we are concerned with.

**Mrs Cunningham:** Perhaps one of the government members could answer that question. I am tempted to, but I think it is your right to do that. So in the question, Mr Chairman, I think it would be more appropriate.

**Mr O'Connor:** I want to thank you for coming. You are right when you say that we have had numerous opportunities to hear from your association. We welcome that input. It has been stated in introductions that tourism does play an important part in our economy. In the development of tourism in the province, then, what does your industry do to promote it? When a previous presentation from your association was put together in North Bay a witness before us said that the mayor did not understand tourism. So perhaps you could share with us the things that do attract tourists here to begin with.

**Mr Sullivan:** First of all, the city itself attracts tourists, from the Copps Coliseum for different sporting events, the botanical gardens, the steel industries, people driving by to look at them. There are all kinds of things in the Hamilton area. When a person wakes up on Sunday morning and he is here on vacation, if the only thing he has to do is go around the corner to the local bar and that is it, he is not going to come here.

**Mr O'Connor:** Okay, thank you. Just to continue then: In British Columbia, where they do have wide-open Sunday shopping since January, I guess, the cross-border shopping has increased dramatically. Is there a cross-Canada hotel-motel association?

**Mr Sullivan:** Yes.

**Mr O'Connor:** Have you noticed, then, that because they are open seven days a week, that they have got better access? They have certainly got the attractions there. They have got the Canadian Rockies and Lake Louise. Is that the attraction or is Sunday shopping the attraction? I am really trying to draw it together. Would the opening of



chain stores and malls at Lake Louise bring more people there, or would Lake Louise bring people there?

**Mr Sullivan:** I would have to say Lake Louise brings them there to start with, but what keeps them there?

**Mr O'Connor:** What keeps them there?

**Mr Sullivan:** Yes.

**Mr O'Connor:** The things to do.

**Mr Sullivan:** That is right.

**Mr O'Connor:** And chain stores would be the things to do, you think.

**Mr Sullivan:** Yes. You take the Toronto area, where the boutiques and all the rest of that stuff are, it was always crowded there. That is where the crowds went.

**Mr O'Connor:** Oh. So it is the unique shopping experience and not necessarily the same stores that they could shop at home in a different community?

**Mr Sullivan:** Yes, I would say that.

**Mr O'Connor:** So it is the unique experience.

**Mr Sullivan:** Yes.

**Mr O'Connor:** So that maybe shopping is important if it offers a real uniqueness to a visitor to an area.

**Mr Sullivan:** Yes, but then how can you legislate that this little wee guy can open—

**Mr O'Connor:** The square footage has been proposed to us. Do you think that maybe that may have a way of focusing on those specialty shops, in highlighting a special area that will interest tourists? Do you think that is a reasonable thing that we should be looking at—the square footage size—so that we do encourage the tourists?

**Mr Sullivan:** That definitely has merit, the specialty shops, stuff like that. But then I have to go back to the other side who say, Cadillac Fairview, they have invested a lot of money; they are big taxpayers.

**Mr Lessard:** Thank you for making your presentation. As you have said, we have heard on several occasions from the Ontario Hotel and Motel Association through our journeys. We have travelled throughout the province of Ontario. I am kind of thankful, really, that today is the last stop on the tour.

We have experienced a lot of different comments and opinions from various people, and we have also experienced a lot of different accommodations and a lot of different service on our travel. When you are talking about being competitive with the United States and keeping people from going across the border and attracting people from across the border to come into Ontario, I think you probably agree that given the quality of life we enjoy here in Canada and the economies of scale they have in the United States, trying to compete on price is going to be extremely difficult. Some of the things we do need to compete on are things like quality and service. That is just my opinion. I do not really think having a lot of stores that look just like American stores open on Sunday available for shoppers is really going to serve that purpose.

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Just to give you some outline of what my experience has been at a couple of places, last night I went out and

ended up in a bar. I was there for about 40 minutes. I never was approached by a waitress the whole time I was there. You might wonder why I would be sitting there for 40 minutes and not go out and seek any service, but I did not want to go in the bar in the first place. I went there because I went to another restaurant and stood in line for 10 minutes to order a salad but was told there was not any salad, so I left that place.

This morning I was at breakfast with my colleague, who was there for half an hour waiting for his breakfast to show up. When he got it he did not get what he had ordered. Something I like to do as well when I am travelling is to run. I appreciate having maps in hotel rooms and being given instructions as to where I might be able to do that and enjoy some of the amenities outside the hotel. On some occasions I have gotten lost because I got maps that did not have all the streets on them. On other occasions there were not any maps available. Some places we have had food that has not been very good and it was not close to the border at all, and the prices were expensive on some occasions.

I really think there needs to be some more focus on the people who actually are going to come here and be attracted to stay in Ontario and enjoy what we have to offer here. It might even be a better idea just to make the areas that surround motels and restaurants look nicer by planting trees and gardens and things of that nature and concentrate on service and quality and the unique things we have in Ontario. I did not think this was going to lead to a question, and I guess I was right. I just want to render my opinion. You have given your opinion and I thought you might be interested in mine.

**The Chair:** Thank you, Mr Lessard. Thank you very much, sir. Your very interesting presentation stimulated us. We also have a clarification from the parliamentary assistant in regard to the question you have brought up.

**Mr Mills:** I believe one or both of the gentlemen expressed some fear that the bill in some way would restrict your business. I would just like to tell you that the bill does not affect the current status of restaurants under the Retail Business Holidays Act. There is an exemption for goods or services sold and it says in connection with prepared meals and living accommodations. So your worries are unfounded.

**Mr Sullivan:** What about a bar that does not have meals, like a corner bar? Does that come under the same blanket?

**Mr Mills:** Just one moment and I will get a legal opinion on that. "The closing provisions of the bill do not apply in respect of the sale or offering for sale by retail of liquor under the authority of a licence or permit issued under the Liquor Control Act."

**Mr Sullivan:** That answers my question. Thank you.

HAMILTON AND DISTRICT  
CHAMBER OF COMMERCE

**The Chair:** Next is the Hamilton and District Chamber of Commerce.

**Mrs Drewitt:** I am Kathy Drewitt, the director of policy for the Hamilton and District Chamber of Commerce.



The Hamilton and District Chamber of Commerce represents approximately 980 companies in the greater Hamilton area, and these companies employ roughly 50,000 people in the Hamilton-Wentworth region. Established in 1845, the chamber has the responsibility and obligation to be the primary voice of business in this area while assisting to promote our community and ensure that it is a good place to live, work and do business. Our membership encompasses both the small entrepreneur and the multinational corporation. It is because of this statement that the chamber is appearing before you this morning. We would like to take the opportunity to welcome you to Hamilton, and thank you for the opportunity to meet with you to discuss our views and the views of the business community of greater Hamilton on the Sunday shopping issue.

The greater Hamilton business community is facing one of the toughest business climates since World War II. Some of the contributing factors to that climate are the high value of the Canadian dollar, the high cost of money, the restructuring of our major manufacturing companies, the impact of the goods and services tax, the loss of some of our traditional markets and an increased competitive climate facing every country today.

The Sunday shopping issue in Ontario is, of course, far more complex today than it was perhaps four to five years ago when Ontario was enjoying a surge in business and economic growth that far exceeded anyone's predictions. Retailers have been particularly hard hit in this recession as individual spending patterns decline in the wake of uncertain times on the world stage.

The Sunday shopping question, for our members, remains a matter of personal choice. In the eight-month time frame in 1990, when the Retail Business Holidays Act was being challenged and stores were taking advantage of the lack of legislation to test their Sunday marketplace, we observed that retailers found their own level of participation in the Sunday opening question. Some opened and some did not. Clearly, for some the need was felt to open to attract more customers. For others who remained closed, mostly independent merchants, clearly it was a personal decision on their part to observe Sunday as a personal day of rest.

The Retail Business Holidays Act is clearly a no-win piece of legislation since the right to open, in the current proposals, is given to one group of retailers and not another. The Hamilton and District Chamber of Commerce believes that the individual should have the right to choose whether his or her store remains open on Sundays, and it should not be a matter for legislation. Their marketplace and customer base will determine that need. We have observed over the past years that shopping has become more of a leisure-time activity and has a direct correlation to the time frame people have for those leisure activities. Leisure time is entrenched in the evening and weekend hours, and therefore a heavier demand for shopping availability is placed on those limited hours.

We also question the fact that this sector of the business economy is the only one to have such a regulation attached to it. No other business sector we know of has a restriction to close its operation on Sunday. If a company wishes to operate seven days a week, it may do so with the

proviso that it does not violate the Employment Standards Act, which sets minimum standards for overtime work.

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We also know that the standing committee has heard from other chambers of commerce on this question, and that a majority of chamber members support the ability of retailers to choose to open on Sundays. Some of the reasons cited for that position include: to be competitive with retail operations in the United States; to create new jobs; to service the tourist market that expects to be able to shop on Sunday; to eliminate the discrimination that currently exists against some categories of retailers who are currently not allowed to open under the tourism exemption criteria; and to provide the freedom of choice for all Ontarians to shop, open their business, work, worship or spend time at home or away doing whatever they wish to do on a Sunday. The Hamilton and District Chamber of Commerce believes there should be no regulation. Therefore, if regulations are enacted, they should be uniform across the province so that one community is not pitted against another vying for the consumer dollar. The proposed legislation, introduced in the Legislature in early June, has caused a great deal of concern to chambers of commerce in Ontario.

We, as a community chamber, cannot accept the responsibility of dealing with applications for exemption under subsection 4(3) of the act. Paragraph 3(1)4 of the regulations made under the Retail Business Holidays Act, tourism criteria, reads as follows:

"If there is a chamber of commerce, a convention and visitors bureau or a similar organization serving the area being considered, a letter indicating that the organization, or if there is more than one of them, one of those organizations, supports the opening of the retail business establishments in that area on a holiday."

To our knowledge, neither the Ontario Chamber of Commerce nor our local chambers of commerce were consulted as to our willingness or ability to participate in this manner. We would certainly have made it clear at that time that our chamber of commerce is not, nor do we want to be, a regulatory body. Moreover, we are not prepared or willing to accept the legal implications that could flow from making these kinds of decisions. We strongly oppose this delegation of authority, and ask that chambers of commerce be deleted from this section of the tourism criteria regulation.

Our chamber has long been a supporter of cost-effective, efficient government and we believe the process of application under municipal bylaw does not allow for this goal to be achieved. Too much time, effort and costs will be incurred by local municipalities to administer separate bylaws with the result that a wide range of interpretation for tourism exemptions will occur, creating disparaging closure legislation throughout the province. Standardized provincial criteria and approval will allow for uniform Sunday openings across the province, and should be supported if legislation is mandatory.

Consideration of exemptions for border communities needs to be closely studied, since merits of this proposal would essentially discriminate between communities. We recognize that the cross-border shopping issue is far more complex and intricately linked to the Sunday shopping issue.



However, we cannot support favouring one community over another in terms of legislation. Greater Hamilton, a community of approximately 400,000 people located less than 40 miles from the American border, lost approximately 25% of retail sales to cross-border trips this year to date, according to a recent survey completed by a local MP. Who will take the responsibility of delineating one community exempt, while another next to it suffers as well?

Our members believe that employees are appropriately protected in current legislation in that they are permitted to refuse Sunday work that they consider unreasonable and refuse work that is in contravention of subsection 2(2) of the Retail Business Holidays Act, work on holidays. We do not believe the proposed amendments are necessary or appropriate.

In conclusion, the Hamilton and District Chamber of Commerce is opposed to the regulation that dictates Sunday openings or closings and feels the option should be left up to the retailer. The chamber recognizes that it is this government's intention to enact legislation on Sunday shopping, and therefore we support the need for tightened, uniform legislation across Ontario and urge that the provincial government take back control for its regulation and adoption. I welcome any questions at this time.

**Mr Daigeler:** Thank you for making your presentation, which I think is very straightforward and clear. At least we know where your chamber stands. In some of the other chambers the opinions seem to be a little more divided. Is the position you are putting forward strongly supported by the members of your chamber or is it more like other areas? Yesterday we were in London and the chamber there took the same position you took today. However, they acknowledged there was a change of opinion among their members. In fact, later on in the day a retail member of the chamber came and was very, very surprised—in fact, I think he was angry—at the position his chamber had taken, because he was on the opposite side of the spectrum. How shared is the view that you are putting forward, and also, has there been a change in that position?

**Mrs Drewitt:** I could tell you honestly that our membership is widely split on this issue as well. As I mentioned in the very beginning of our presentation, we have both the small retailer/entrepreneur and we also have large multinational companies that either are for or against the proposed legislation. I think that is why we have taken the position over the years that those individuals should have the right to dictate what they do within their own company. Therefore, it will allow for one member who might want to close on Sunday to do so, and allow another member to open if he wishes to.

**Mr Daigeler:** Would you have the feeling that this is a question that pits the retailers against the other members of the chamber? Or is there among the retailers a split opinion as well?

**Mrs Drewitt:** I am sorry, I do not understand the question.

**Mr Daigeler:** You indicated that you have different members in the chamber. Yesterday the retailer said they did not ask the retail sector.

**Mrs Drewitt:** I would say that the retail sector, even within its own framework, is evenly divided. I could mention small entrepreneurs who do not wish to open on Sunday, and are very vehement about that, and others who want to be open to try to compete with cross-border shopping. Because of downsizing in the economies, others are equally as vehement that they would like to remain open. So I would not say that it is a retail issue solely. Even within the retail constituency itself, it is evenly divided.

**Mr Daigeler:** And this position that you are putting forward today is the same that you put forward two years ago?

**Mrs Drewitt:** Yes, it is.

**Mr Daigeler:** That is interesting, because most chambers said that they changed their minds.

**Mrs Drewitt:** As I mentioned, we are not in favour of any regulation. Therefore it would allow for any opening or closings as the retailer wishes. That has stood the test of time over the past 10 years in terms of being able to deal with all levels of government.

**Mr Daigeler:** Earlier this morning we heard from Mr Caplan, I think, who said that during the time when the Sunday regulation was in limbo the small retailers stayed closed, but they lost a fair amount of business to the chain stores. Would that be your assessment as well? Is that what you heard from the retailers?

**Mrs Drewitt:** I cannot comment on that.

**Mr Daigeler:** You do not have any information on that.

**Mr Carr:** Thank you for your presentation. On page 3 you talked about pitting one community against the other for the consumer's dollars. I take it that is why on the last page you said you wanted uniform provincial government legislation? Is that the reason behind it?

**Mrs Drewitt:** Right.

**Mr Carr:** This morning we had Mayor Bell, who of course is also a councillor. She said she suspects there will be Sunday shopping in Hamilton-Wentworth. Again, that is a bit of a guess on her part, but as mayor and a councillor, presumably she would have a pretty good idea. I was just wondering what your thoughts are. Do you see Sunday shopping in your community?

**Mrs Drewitt:** If it were left to the individual municipalities?

**Mr Carr:** If the bill stays the same.

**Mrs Drewitt:** Yes, I do.

**Mrs Cunningham:** I am wondering if you would like to help me in answering your own question on page 4.

**Mrs Drewitt:** That is why I asked it—I do not have the answers.

**Mrs Cunningham:** Maybe I can give you a suggestion that has been put forth today on behalf of two or three of the presenters, as well as an option the former government had and did not take advantage of. That is, that a provincial body be established to administer the definition of a tourist area, maybe cross-border-exemption kind of thing, a border town. Certainly there is room for thought on this. It is a model that seems to be working in New



Brunswick. Has your group, given the responsibility you have, looked at that as being a solution that would in fact throw the responsibility back to the province? What other option do we have?

**Mrs Drewitt:** The provincial body—however you set up a regulatory body it will have to come from the province—is going to have to tread very carefully not to pit one community against another. As I mentioned, if Niagara Falls, for instance, opens up, then Hamilton will not be far behind. But who is to say whether Hamilton is a border community or not, and is suffering equally, if not more?

1150

**Mrs Cunningham:** Somebody has to accept the responsibility. Perhaps we as elected people ought to stand up for what we believe in. It is not an easy decision. But it is something we should be accepting the responsibility for. Otherwise, throw it open. If we throw it open, that is the responsibility of this government. But I think right now, to say that this legislation supports a common pause day is not fair. It is not true. That is what people have been saying as they come before the committee. I was wondering what your response to a provincial body would be. I am guessing that you think at least the responsibility has to be there.

**Mrs Drewitt:** It is going to have to be something.

**Mr Fletcher:** Thank you for your presentation. We have been going around the province. We have heard from a lot of small retailers who have come on their own. Some of them belong to their chambers and some do not. They have been saying that this legislation is a step in the right direction, that it is starting to reinforce the commitment of this government toward a common pause day, and that the problems they see with Sunday opening are not consistent with what chambers are saying. That is their right, and I agree with that. I think the chambers have organized well.

I remember in Peterborough, it was interesting because the Peterborough Chamber of Commerce really did deviate from the Ontario position. But that was because of their area. We have also been hearing a lot that municipalities do not want to have the responsibility, that chambers do not want to have the responsibility, and we just talked right now about a board.

I really want your opinion on this one. What about setting up a board or a committee of the stakeholders who are involved—retail owners, unions, the local governments—and trying to work out effective criteria to make the regulations as far as tourism is concerned a little more stringent, maybe a little tougher, so we do not have this patchwork? Is that something that we could work towards? Is that something that is viable?

**Mrs Drewitt:** I would not want to speak for those stakeholders who would either be prepared or not prepared—I cannot speak for them. But as a member of the chamber of commerce movement, I would certainly welcome the opportunity to provide you with some in-depth analysis of how we see the criteria unfolding in terms of a tourism exemption or whatever else.

**Mr Fletcher:** Yes. If we ask for your input, you would be willing to assist.

**Mrs Drewitt:** Yes. I am sure the Ontario chamber would welcome that opportunity. But I cannot say I would see that as the regulatory body. I could see that they would provide input to some criteria but I cannot see that it would be the regulatory body.

**Mr Fletcher:** Right. Not as the regulatory body; to try to set up the criteria and everything else. It is something that we have said we would like to do.

**Mr Kormos:** You and I disagree. I think we disagree about common pause day and Sunday shopping.

**Mrs Drewitt:** That is fine.

**Mr Kormos:** And at the same time we have so much in common, because both of us have concerns about the legislation. I share your concern—and the trade union movement and a whole lot of other people share your concern—about this business of municipalities having the responsibility of applying the legislation. In my view, it is inappropriate, it is dangerous. We are going to be far more effective at creating a common pause day if indeed the provincial government establishes the body which applies exemptions, regulations, concerns. Mr Fletcher spoke of concerns about the tourism regulations, tourism definitions as they exist now. The images people have been creating—everything from Mack trucks to 747s travelling through these guidelines. I am hoping that the government accepts or moves some of its own amendments in that regard.

But there is one thing about which I can be certain—and it is not because the Premier and I have been spending special time together lately—and that concerns the chambers of commerce being involved in the exemption process. You spoke about that on page 3, subsection 4(3). I am not telling stories out of school, but I am just telling you I will bet the farm that does not remain in the final legislation. I know that is not tantamount to the minister making an announcement in that regard, but trust me on that one. That will not see the final legislation. Thanks a lot for coming today.

**The Vice-Chair:** Thank you very much for that fine presentation. You obviously will help us in drafting this legislation. We are now finished with the morning's proceedings.

**Mrs Cunningham:** My colleague over there is just flipping to hear what I have to say in support of what has been said. You know what really shocks me, Mr Chairman, as we take a look, as politicians, at draft legislation such as this? I would say this in opposition right now. I am not pointing fingers at the government. I find it shocking that a government could have been advised to include the chambers of commerce, first of all, without consulting with them—and I am blaming the bureaucracy here; second, to show so blatantly how legislation and democracy should not work. That is, if you are elected you make decisions that are written into legislation. If you are not elected you may be an advisory body to the government. To write it in a law so that they have to take the legal responsibility of their decision is so inappropriate and so wrong. We as politicians are getting that kind of advice from high-qualified bureaucrats. It is absolutely frightening in this province—and that's what I think it's all about.



**Mr O'Connor:** If I may just respond briefly for a matter of clarification. I just wanted to point out to you where that was. In fact, I agree with you. You even stated why the whole thing comes out for public hearings—so we can have some input from the stakeholders. But that part was in the regulations. It was not in the law. I am glad that the regulation in this piece of legislation was put with the bill so that it could be discussed fully, because it does not happen very often. I am glad that it is open. That is why we are here with all these witnesses.

**Mrs Cunningham:** I think it happens too often. All of us are subjected to it as politicians.

**Mr O'Connor:** And the regulations should be—

**Mrs Cunningham:** We get blamed.

**The Vice-Chair:** Excuse me, folks. We can do this during clause-by-clause. We are now adjourned until one o'clock.

The committee recessed at 1158.



## AFTERNOON SITTING

The committee resumed at 1307.

NATIONAL GROCERS CO LTD  
UNITED FOOD AND COMMERCIAL WORKERS

**The Chair:** I would like to call our meeting back to order. First off, I would like to apologize to the presenters for our slight delay.

We have before us a slight change on our agenda in that our first two presenters are presenting together: Mr Chuck Gyles and Ms Susan Shaw from National Grocers, and Brother Bryan Neath from the United Food and Commercial Workers. Instead of a half-hour per presentation, they have agreed to pool the time so that we would have a full hour to have their testimony and, of course, questions.

You have been with us for this morning and, I believe, part of yesterday as well, so you are familiar with the procedure.

**Mr Neath:** I will formally introduce myself, and then I will allow Mr Gyles to formally introduce his side of the family, if you wish, and I like to refer to it as a family. I believe yesterday the comment was made by a few parties of how it is great to see that the union and the companies are sitting and working together finally—I even think I heard that word. Certainly, for our side in the union—I am not going to speak for the company, but we work together on many things, not just this issue. Collective bargaining is working together to try to resolve the areas, and I think sometimes the public does not get that clear a message across.

My name is Bryan Neath. I am an international representative of the United Food and Commercial Workers. I am assigned to work in Canada and I am assigned to the service sector portion of our union. I have a fairly good background in terms of what is happening in the US and what is happening in Canada on this issue as well as many other issues. Prior to working for the national union, I was working in a local for eight years and, also probably more important to this issue, I was a full-time and part-time retail employee in a supermarket for 14 years. Again, I feel I have a fairly good background in experience to this.

What we plan to do here is, Mr Gyles and Ms Shaw, on behalf of National Grocers, will make a presentation, and then I will make a presentation, and we hope to give you a good half-hour so that you can throw the questions as you wish at us.

**Mr Gyles:** Thanks, Bryan. Just to set the record straight, there are some things that we do disagree on.

With me is Susan Shaw, who is director of industrial relations for National Grocers. My name is Chuck Gyles. I am vice president of human resources and industrial relations for National Grocers.

It is National Grocers' pleasure to be here once again today to make its presentation on Bill 115 to the standing committee on administration of justice. Some of the things I am going to say reiterate what Mr Faas had indicated to you yesterday. However, I think for the enlightenment of the people who were not there yesterday in London, and as well because of the seriousness of some of the comments

that he made, I would like to repeat those. So I would ask for your indulgence in that.

National Grocers is the Ontario arm of Loblaw's Cos Ltd, and is the parent company of several different companies that all operate within Ontario, namely Loblaw's Supermarkets Ltd, Zehrmart Ltd, and we are franchisers of Hasty Market, Mr Grocer, Your Independent Grocer, Valu-mart, Freshmart, No Frills and Fortino's, well known in the area in Hamilton. We operate approximately 450 retail outlets, all located in Ontario within the cities, towns and villages. In Hamilton alone, we have 17 retail operations here.

Collectively, we employ in excess of 25,000 employees in the province, and we are the largest private sector employer of unionized employees in Ontario. All of our corporate stores and our nine distribution centres and over 60% of our franchise operations are covered by collective agreements.

As you may appreciate, being a federation of companies, both corporate and franchise, there are differing viewpoints with respect to this issue of Sunday openings. There is consensus on one thing, however, and that is that we must play on a level playing field. To ensure this level playing field, stores should not be given a competitive advantage by being allowed to open, either through loopholes in the legislation, which do not reflect its intent, or through the municipal option where trading areas overlap or through an improper designation of a store under a tourist exemption. In the event that there is a proliferation of competitive advantages, we would have no choice but to request wide-open Sunday shopping.

That, however, is a very extreme position and does not undermine our overall support for the notion of a common pause day. We are fundamentally committed to the principle that Sundays should be days on which most businesses are not open and most persons do not have to work.

National Grocers and its related companies appreciate the government's efforts in introducing legislation that is aimed at enshrining a common pause day in Ontario and detailing the restrictions on both Sunday shopping and Sunday work. While we recognize that the legislation marks positive progress in this regard, National Grocers and its subsidiaries have five main concerns with the proposed amendments to the act.

I believe most of you have documents in front of you. I am not going to read it verbatim in the interest of trying to have enough time at the end of this for questions, but I am going to skip through this document. Please accept the document as our position, and in no way am I slighting any parts that I skip over.

The five areas that we are concerned with mirror exactly the position taken by the United Food and Commercial Workers Union. National Grocers and its related companies have long had a history of open discourse and interaction with not only the United Food and Commercial Workers but with the Retail, Wholesale and Department Store Union and with the Teamsters. Based on these long-standing relationships, we at National Grocers feel confident



that the position put forward by us represents the best position for both the retailers, our unions and our 25,000-plus employees.

I would like to explore the five main concerns in greater detail now. I do not want to get into the background, in the interest of time, but we have made mention of them in the document.

The first concern that we have is the intent of the Retail Business Holidays Act defining the common pause day. The proposed legislation recognizes the need for and the importance of a common pause day. Unfortunately, in our view, the legislation does not clearly specify the meaning of "common pause day." To that end, we would propose that Sundays and holidays remain as common pause days and be defined as days on which most businesses are not open, and days on which most people do not have to work.

The second major concern is on the municipal option and the criteria for exemptions. It is our view that the regulations and criteria for tourist exemption privileges are so overly broad as to effectively restrict no one. In response to this scenario, we would propose the following amendments to the legislation. First, we would request that a new set of viable tourist criteria be established. These criteria should be addressed and delineated by a committee of stakeholders in the tourism industry which would include representatives from retailers, from unions and from the government.

Even if legitimate and viable tourism criteria were negotiated in this manner, it is our belief that the application of criteria by municipal councils across the province will likely create problems of inconsistency among the different regions.

In order to address this concern, we would recommend that a provincial tourism exemption board be established to deal with appeals by interested parties regarding a municipal council's decision. This body would serve as a check on the municipalities to ensure that the tourism exemption criteria are uniformly interpreted and applied. The tourism exemption board would have the authority to make final and binding decisions on these matters.

We also believe that if a geographic area is designated a tourist area, there should be no size qualification with respect to Sunday or holiday openings. It is our position that if it is properly determined that an area must be open for shopping to service tourists, such shopping should not be limited to only small retail establishments. This position reflects our belief that if loopholes or exemptions are permitted in the legislation, wide-open Sunday shopping will be the only viable means of ensuring a level playing field among all retailers.

Our third issue has to do with drugstore openings. Currently, drugstores with a square footage of 7,500 square feet or less may open on Sundays or holidays. These drugstores must dispense drugs, and the principal business must be the sale of goods of a pharmaceutical or therapeutic nature for hygienic or cosmetic purposes. No other goods are allowed for sale with the exception of sundries. Unfortunately, sundries are not defined, and it is our belief that the vast majority of Sunday and holiday sales occurring in these drugstores is comprised of pop, potato chips,

candies and other foodstuffs labelled "sundries." These sales occur in spite of the consumer's ability to purchase such non-pharmaceutical products at small convenience stores allowed to open on Sundays.

Moreover, it is our belief that in the absence of a restriction on the number of employees working on Sunday or holidays, these drugstores are scheduling extra employees on the holidays to facilitate or enhance the sales of non-pharmaceutical products.

Our recommendations with respect to this issue are twofold. We would suggest that the allowable square footage be reduced to 3,500 square feet from the 7,500 square feet. This size store will provide ample opportunity for the public to access needed medication or other prescription products. We believe that the number of employees serving the public in this way should not and need not exceed four, including the pharmacist, who must be present in the establishment during business hours.

The fourth issue is the enforcement of the legislation. The current legislation provides for a maximum fine of \$50,000 upon conviction for illegal Sunday openings. Only two parties, the Attorney General of Ontario or the municipality, may apply for an injunction to close an establishment that is opening illegally. There are no minimum fines for breaking the law. Many offenders, and I have to confess that we have been one of them, have received fines of only \$100 upon conviction.

It is our view that enforcement of the legislation must be greatly improved. The proposed fines of \$500 and \$2,000 in the RBHA will not satisfy this requirement. In fact, it is our belief that such fines will merely be seen as a cost of doing business—and negligible at that, I might add—by those establishments that intend to open on Sundays and holidays.

While we no longer support that approach to achieve adequate enforcement of legislation, it remains our position that the proposed enforcement mechanisms in the RBHA will not deter retailers from opening on Sundays. We therefore recommend the following changes: For first offences the minimum fine for conviction be increased to \$10,000 and for subsequent offences the minimum fines be set at \$20,000. Second, any affected party may apply to the Supreme Court of Ontario for an order requiring a retail business establishment to close on a Sunday or holiday to ensure compliance with the RBHA.

Our fifth and last major issue is the definition of a retail business. Under the proposed amendments, the government has not addressed the existing problem relating to the definition of a retail business. As a result, giant stores operating under the guise of membership clubs will continue to do business on Sundays. These club warehouses, such as the Price Club, sell food and other merchandise. The current exemption status of these clubs gives them an unfair competitive advantage over other large food and general merchandise retailers.

In order to ensure a level playing field among similarly sized and situated retailers, it is our recommendation that a change in the definition of a retail business be made to include the selling of goods or services by retail to any member of the public, including a member of a club or



co-operative or any other group of consumers. We also recommend that the definition of retail business establishment be amended to read "means the premises where a retail business is carried on. Any space or stall in markets, particularly in covered markets and 'flea markets,' shall be considered to be a retail business."

Without such changes to the legislation, it is our view that any and all businesses should be free to open on Sundays to be able to properly compete with these retailers.

In conclusion, in 1988 we made a submission on behalf of Loblaw's Supermarkets, and you have that in the documents in front of you. I ask that you refer to it. It is very similar—in fact it is exact—to what we are saying to you today. Since then we have had some experience on wide-open Sunday shopping. During the six months following June 1990, when wide-open Sunday shopping was allowed, hours available to employees to be worked did not increase. In fact, when our stores were open seven days a week, our policy was to spread the existing six days of available employment hours over the seven days. While the legislation prevented us from forcing employees to work on Sundays, the effect of the scheduling policy was such that many of our employees felt obligated to accept Sunday work to ensure they obtained sufficient hours during the week.

For six months in 1990 wide-open Sunday shopping was permitted. During that time, we initially saw an increase in sales. I put that to the novelty of the situation. Within a short period of time, however, we saw our sales level off while our cost of operation increased significantly. We attribute this increase to the premium labour rates required to be paid to prepare for and open on Sundays. It has always been our position that there is a limited pool of food shopping dollars that will be spent during the six normal days of retail food operation. Our experience has shown that by providing a seventh day of operation, the total food dollars spent by consumers does not increase but rather is spread out over an increased number of days. From a retailing perspective, this fact only points to the necessity for increased costs to serve a seven-day operation with no related increase in total sales.

I would now like to draw your attention to three specific issues I would like to further address with you.

The first is the tourist areas. We have many retail outlets that operate in cottage country. They are generally anywhere from 5,000 to 25,000 square feet. They would see incremental value in opening on Sundays but they would not build larger stores because it is very seasonable. They are very busy during the summer and everything flattens out during the off-season.

Second are Price Clubs, which is a major issue to us, the operations of the Price Clubs and cost co-ops selling to the public under a membership scheme. These operations have held themselves out to be servicing small business on a wholesale basis. It is our belief that a large percentage of their sales are made to individual members of the public whose purchases are for their own or their family's use. As such, they are directly competing with conventional retailers, such as food supermarkets or department stores. These clubs sell food and non-food products in large quantities at

alleged volume discounts. Conventional supermarkets also sell food and non-food products under similar arrangements. I would like to bring to your attention our club packs in most of our stores.

In light of these similarities, it is our view that the membership clubs should be properly recognized as retail establishments and required to close on Sundays. Only uniform and consistent treatment of all retailers will ensure a level playing field among competitors.

Just as a note, the Solicitor General has ruled Price Clubs to be retail establishments under the act, yet still the enforcement of it is obviously a major problem. It is just another example of some of the frustrations we are dealing with at present.

The last issue I would like to emphasize with you is drugstores. You have all been handed some documents that are flyers put out by the drugstores. I would ask you to at least look at them. You will take note that they are very similar to some of our Loblaw's and some of our retail competitors' brochures.

If the intent of the exemption is to allow the public to obtain necessary prescriptions, then there is no need to have 7,500 square feet of selling space. If the intent of the exemption re sundries is to allow the population access to chips and candy that is sold, convenience stores of 3,500 square feet could fit that bill perfectly. In looking at the drugstore advertisements I was alluding to, it is difficult to see any difference between their advertised products and those of conventional supermarkets.

I would like somebody to ask the drugstores what percentage of their sales on Sundays are prescription items. It is our understanding that the overwhelming percentage of Sunday sales are of non-pharmaceutical items, such as pop, chips, candy and food items. I would also like to ask drugstores which sales they are targeting with their flyers, such as the ones you have in front of you now. It is our belief they are positioning themselves as alternative supermarkets. If this is the case, drugstores and supermarkets should be treated in the same manner.

That concludes the National Grocers submissions.

1330

**Mr Neath:** As the committee knows, the United Food and Commercial Workers union has had a strong presence at these committee hearings all across the province. My particular position has been to quarterback the Sunday shopping position and this is your last chance for you to take, if you want, a shot at us or get a better understanding of our position.

First, though, before I talk about our recommended changes, I want to draw on four things. The first one is the question of cross-border shopping. You have been told, and I just want to make sure you get it from our side, that is a separate issue, a totally separate issue. As a matter of fact, United Food and Commercial Workers is sitting on a national task force, of which I am a committee member, that has been set up by the federal government to deal with that particular issue. That also maybe proves we are sometimes willing to deal with anybody in order to get to things that are needed.



The first thing I want to touch is in front of you. You received copies of our recommendations, but back behind them there are some newspaper clippings. Through these hearings, which we have been following, so often you heard about: "It's time to get into the 1990s. Let's be like the United States. We can hardly wait."

I want to draw your attention to the very first newspaper clipping that is in the back part of our brief. It is from the Chain Store Age Executive magazine of March 1991 and is titled "Unemployment, Store Closings on the Rise." This is a United States article, not a Canadian article. Down in the second paragraph it talks about how Sears, Roebuck has announced plans to cut 33,000 employees, including 13,000 full-time; Hills Department Stores is closing 28 of its 214 stores; in January several catalogue showroom chains, including Best Products and W. Bell, filed for protection for bankruptcies; and the Computer Factory plans to lay off more than 300 employees or 20% of its workforce. A little farther down it talks about how between September and the end of December, and this is 1990, there was a loss of about 150,000 jobs.

On the next page, out of a UFCW magazine of August 1991, under the title "Economic Overview," it says "The current recession has hit women sales and service workers hardest, a recent report from the Women's Research and Education Institute says." I take you to the very first part. "According to This Recession's Invisible Victims: Women Sales and Service Workers, the current recession is hurting the service sector as well as the goods-producing sector." This is quite different from the other recession, the recession of the 1980s where the service sector improved when the manufacturing sector went down.

It goes on to many other points in there that I am sure you would love to raise, but I am going to stop. The recession is hurting in the States as well as it is in Canada. That is what it is. It is a recession and that is what is hurting the jobs and that is what is hurting the sales in the stores, not the Sunday shopping issue.

The second point I want to deal with is the question of jobs, jobs, jobs. It almost sounds like it is a platform for one particular party that I heard a while ago. I did not want to get into party politics at all here because I do not think this is an issue of party politics. If the unions and the companies can sit in front of you and make these joint presentations, I would love to see you as a committee sit in front of us and come out with a joint proposal at the end of the committee hearings and be together for once. It would be a nice example for the rest of the world to follow.

With regard to the question of jobs, someone comes in and says, "When I opened Sunday, I hire five people; when I closed, I fired five people." I am not too sure if you understand what happens in the retail industry. The retail industry is simply a distribution of jobs. If you take a look at the next article, which is from the Business and Society Review of the winter of 1990, which, again, is a United States article, go to the second page and it is down on the right hand side, the last paragraph. It starts, "In Virginia." This is the Food Lion corporation and it says they built 150 stores but they closed at least that many stores in the areas that they opened. That is the other part of what happens

when someone says, "I created this job," and it goes on to say this so clearly in this particular article. I will read it because it could not be said better.

"Food Lion can and has undercut its competition by compensating its employees with substantially lower wages and fewer benefits." That is what happens in retail food. Knob Hill Farms opened up in Cambridge last week. They so proudly announced that they created 350 jobs, but there are 350 people who lost their jobs, people who were at a higher level. Knob Hill Farms hired down here. They got brand-new people working in their place, hired down here. They have a competitive edge and they will until they get to this stage and the next competitor comes in. I guess I get upset when I keep hearing about jobs, jobs, jobs because there are no jobs and I think that is quite clear.

The last item I wanted to discuss is the question of shopping and tourism and how it goes hand in hand. I had the opportunity to be a tourist this summer. I went to Alberta. I stayed inside Canada; I did not go across the border. I am sure a lot of people will be happy. When I am on a cross-border shopping task force, I had trouble deciding to do that anyway.

I cut this article out of the Edmonton Journal, dated July 18, 1991. I wanted to make some point through here. It is a discussion with American tourists in Edmonton, Canada, and it talks about what happens when they cross the borders. The gas prices double, it says, and the owner of this particular tent and trailer park where this interview was done said he believes and agrees with what the Americans are saying: the reason Americans are not coming here is cost of gas. He states in here, "My business used to be 84.2% Americans. Now I'm surprised if they're 20%." This is in the wonderful wide-open Sunday shopping of Alberta.

This article goes on and talks about this American couple going shopping at the West Edmonton Mall, because from Florida, where they live, they had heard so much about it. While they did go there and agree that the West Edmonton Mall was wonderful, they left empty-handed, and again it was a question of cost. It makes no particular difference whether you open Sunday. I just wanted you all to read the last paragraph because it does present a nice view of Canada, and I think what we really are looking for here is a nice view of Canada.

I want for a minute to talk about some of our changes. I am not sure if this committee understands that from day one, back when the NDP was elected, if you wish, or the new government was elected, we presented the new government our recommended changes to the Retail Business Holidays Act because, I do not think it is a surprise to many of you, we were not happy with the old one. When we come to these committee hearings we have changed our position. In some cases we have changed our position drastically from where we were before. I want you to understand clearly that we did that through many a fight inside, because many of us did not agree with a lot of the changes.

1340

I want to talk about probably the most glaring change in our position, the question of the municipal option. We have always been saying it is the provincial legislation that must take place, not the municipal option. We told that to



the old governments and we told the new government this time around when Bill 115 was introduced. A surprise to some people, maybe—the unions did not get what they wanted. We ended up with the municipal option and we are not happy about that. We would like to go back to the provincial option.

I understand that with the provincial option, in order to do that, you must have a board of some sort that would take all of these exemptions to this board. I understand this board will be quite expensive. If the Liberals and the Conservatives agree with the provincial option, and so does the NDP, then we should have that and we should do that, but there is a cost; if they all agree, then they have to agree that we have to bear the cost no matter how bad the recession is.

If you do not agree with that, then you take the position we have taken. That is how we got to our particular position as well, and that is the municipal option. You have to have a place to go to argue that the municipalities are abusing the criteria.

There might be a cost to that as well. I repeat, we want the provincial option—clear as can be. We were happy and we want the provincial option. If you stay with the municipal option you have to do two things: you have to make the criteria so hard that the municipalities will not bother to go because they are going to say, “We’re going to lose anyway.” But if they do take it on and it is a violation there has to be a good, strong board that can revise or reverse the decision made by them. That is our position and I hope that position has become fairly clear to all of you.

I was going to take some time and point out some of the bad things about the regulations, but I am not going to. I am not going to be the person from UFCW who says the regulations are a joke. No, we are not happy with the regulations; they could almost be called a joke, but they are not.

Chuck was so right when he said we do not agree on everything. They do not agree with us on the tourist option, you can see that if you take a look. They are saying if it is designated as a tourist area it is wide open. We say no, we say 4,000. We still believe in the 4,000-square-foot position. I just wanted to point out a couple of reasons. Maybe you have not heard this as clearly as possible.

First of all, if you agree on the intent of a common pause day, to get the fewest people working, and if you have a smaller square footage, as an example, of 4,000 feet, you do not need a large staff, instead of having it wide open. That way you maintain that principle.

The other thing, we keep saying that as far as we are concerned the tourist stores that are open should be specialized and not general stores. Any store with a small square footage—again, using the 4,000 square footage area—will have to be more specialized, as opposed to being a general store. We believe those stores now that cater to the tourist are already under 4,000 square feet.

The other thing we are more than willing to talk about is that if there is something bigger than 4,000 that would definitely fit the area of tourism, we believe it should be talked about and written into the regulations or into the law, “This particular spot in Wasaga Beach is bigger than 4,000 and it can be open because,” but make sure we do

not open loopholes so someone can develop or make a store the same thing, simply to get an exemption.

The last area I want to talk about—I should say there are two of them. One is the drugstores. Again, you can see we are not in quite the same position as National Grocers. They are talking about a 3,500 square foot and we are talking about 2,400. Sometimes in negotiations you have to move and I certainly can speak on behalf of the UFCW. We will move on that issue. We will go to 3,500. Here we are negotiating again.

I wanted to point out that we do have under contract the Pharma Plus Drugmart, UFCW, so we have a good idea of what a drugstore is. We went out and did a snapshot look at the Pharma Plus. First of all we found out the standard-sized Pharma Plus drugstore is between 2,000 and 3,500. This was done before we realized their 3,500-square-foot position. Second, no matter what the size, if the store is 1,000 square feet or 20,000 square feet, 10% of the selling area is for pharmaceutical; 90% of the rest of the Pharma Plus stores are for non-food. So again, if you take a look at a 7,500-square-foot store that is selling 10% pharmaceutical, that leaves 6,750 square feet for all of the non-food items that Mr Gyles talked about. That is certainly a lot bigger than a 2,400 convenience store that you allow to open. I have a whole list of the reasons why they are permitted, but Chuck I think talked about them quite clearly.

The last point I want to make goes to the Price Clubs and the definition of retail business. I know when we finish talking Mr Mills is going to get up and say that the staff of the Solicitor General has researched and, yes, they are a club and, no, they cannot be open and—

**Interjection:** Attorney General.

**Mr Neath:** The Attorney General, I am sorry. It does not matter who did it, they did not do a very good job.

The problem we have is that they are open today. I understand and I believe—I do not know—but I believe they have not been charged and they are still open. If you change the definition you will make sure they are closed, because if you do not change the definition and say, “Well, we believe they should be,” they will take you to court. We will be in another long legal battle. The second part of it that goes I think so well, if you accept our position that you have the right for the injunction, we would take them on if you are afraid to do it. So you need that. It is so important that those two things go hand in hand.

I think I will stop because I have the ability to ramble on, I have been told once or twice in my life. I thank the committee for allowing us, by the way, to jointly do this presentation and I hope we have done a good job for you. We are open now and we have a good 20 minutes for questions.

**The Chair:** Thank you, Mr Neath, for determining that for me. We have approximately six minutes per caucus. Mr Daigeler and Mr Poirier.

**Mr Daigeler:** Thank you again for making a joint presentation. As you indicated, we had the experience yesterday in London and I welcomed it at that point. I say again that I certainly am pleased to see the employers and the employees work together closely on such an important



question and I hope that can happen in other areas of our economy as well.

With regard to the brief presented by you, Mr Gyles, you are saying on page 4 that in your view—and I share that view—the regulations and criteria for tourism exemption are so broad as to effectively restrict no one. In fact, when I questioned the former Solicitor General on his definition of tourism I think he even broadened it further than what was there already and said basically anything that promotes tourism can fall under that exemption. I think he mentioned that to satisfy the tourism operators. So he was very flexible in that regard and that is certainly on public record.

On the other hand, you are saying at the bottom of page 2, “in introducing legislation aimed at enshrining a common pause day in Ontario and detailing restrictions on both Sunday shopping and Sunday work...the legislation marks positive progress.” I fail to see, quite frankly, where you see the progress because the way I see it, there may be a difference between the words that are being used by the new government and by the old government, but what will actually happen—and many presenters have confirmed that view—is that we are going to have open Sundays. So I am wondering where you see the progress that is coming in with this particular legislation.

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**Mr Gyles:** As far as I am concerned, just by their declaring that Sunday will be a day of pause or a day of rest, I think that is the kickoff that we needed in order to take the position we have been taking. You have got to understand that over the years we have been very frustrated with no clear-cut position taken by the government, and I think we have seen an example of that now, rolling in the direction that we are going.

**Mr Daigeler:** But you are aware that under the old Liberal legislation Sunday was the day of common rest. However, it was possible to be exempted from it, so we also had established the idea that Sunday would be the normal day under which we would be closed, but if an area decided that is not what they wanted to do, they would have the option. So again, I do not really see the substantive difference between them and us on this point. I really feel that—and some members, in fact, of the government caucus have argued—it would be much more honest, if they really are interested in having this common pause day, to have very strict regulations and to close everybody down. Some members of the government caucus have argued that, but we will see whether they are going to be successful with their ministerial colleagues.

**Mr Carr:** Thank you very much for the presentation, Bryan and Chuck. I am glad you came. I think I was one of the ones who said originally that I hoped the companies would come, and I am glad you did. I think I can also appreciate where sometimes you do have to change your position, because you have a position then a new law comes in and you have to say, “Well, based on this, now what do we do?” So I can appreciate where this has changed.

The one area, though, where I see disagreement is on page 5 where you say “no geographic areas,” and I do not think that is the position of your union, because they still

want to keep it. Is there a disagreement over that portion of it?

**Mr Gyles:** Sorry, could you further clarify what it is you are asking?

**Mr Carr:** Yes. We believe if there is a geographic area designated, so if somebody comes in and says, “Tourist,” the whole area is open. You say, “Let’s not have the 7,500-square-foot restriction.” I think that is because you will be caught in that, right? You will be above 7,500 and then you would have to go back. I was wondering if you and the union agree on that, because what happens is, it is very confusing if you have got the two positions if, in fact, everybody else is open. What you are saying is: “Let us be open, too. We do not want to be open, but there are competitive advantages.” Is that what your union is saying as well? If an area is open because of tourism you would say, “Let us be open, too?”

**Mr Neath:** Are you asking if the union takes that position?

**Mr Carr:** Yes.

**Mr Neath:** No, we do not, right now. I do not think they were that far off, to be honest with you. Our problem with that position is—the best example in the world is Wasaga Beach. In Wasaga Beach they happen to have a Zehrs store, which is part of National Grocers, that is over 7,500 square feet; it is probably 20,000 square feet. I think I can understand Wasaga Beach being a tourist area. If you say that is a tourist area and you open it wide open, Zehrs will be open. Six miles down the road is Collingwood and A&P in Collingwood says, “Wait a minute. Now we want to be open,” so that is where the domino effect continues, and that is why we made the recommendation of the 4,000 square feet. I have not heard an argument yet to get me off that, but maybe Chuck will give it to us right now.

**Mr Gyles:** You heard it before. There is a very real danger of a domino effect when you have one municipality declaring they are a tourist area, but National Grocers feels that no matter where that happens, there are those people out there who are going to take advantage of that opportunity of it being open on a Sunday. If we do not have it wide open in that area, there are those opportunities for the smaller companies, the drugstores, to open; and when that happens we do not enjoy that level playing field.

I might want to add one other thing. We are very largely unionized, as I had indicated, and some of our major competitors in this marketplace in Ontario are non-union locations. We have been able to combat that competitive advantage that they have up to this point, but when they start having the ability to open on Sundays and open on holidays as well and we do not, then that disadvantage that we have becomes that much wider.

We have had discussions with the unions about it; it is a concern. I am not sure what their resolution to it is going to be, but we just have to take the position that if anybody is open in a tourist area, we should all be open, or have the right to be.

**Mrs Cunningham:** It is a pleasure to see some familiar faces, some consistency in these hearings over the years. I think we have a choice in Ontario of either saying we are



going to recognize tourist areas as we have in the past, and then take a look at some of the restrictions within that—I think you offered an interesting one with the 4,000 square feet—or we have to say we are going to have wide open Sunday shopping. Certainly, from what I have heard, I do not think we have any other choices.

This bill is basically wide-open Sunday shopping, as I read it. I do not think it is very much different at all from the former Liberal legislation, so I am appreciative of some of the specific amendments.

I notice on page 3 of your brief that you are basically following the specific recommendation of the Ontario Federation of Labour on the defining of a common pause day, so there is some consistency there.

On page 4 where you talk about the set of viable tourist criteria being established, I appreciate the fact that you are prepared to stick your necks out and help us a little bit here, because the position of the former Liberal government was that you could not define it, and therefore they would not tackle it. Certainly the minister of the day, Joan Smith, said that many, many times, and they just would not tackle it.

Tourism Ontario was prepared to lead the way in helping the government with that definition, and I am wondering what kind of input we should be looking at with regard to that definition of a tourist area. And then the regulations within it: What kind of process should the government be looking at for that, because we are then into another whole discussion, I think. I would say to either of you, if you have any thoughts on process I would appreciate them.

**Mr Neath:** It is probably a repeat of what has been said, but I think the Metropolitan Toronto area went through that process. They went and got stakeholders together to discuss the whole aspect of a common pause day, tourist criteria, etc. They put these stakeholders in a room and they went back and forth and made all the arguments for and against and they came out with what they believed to be a set of tourist criteria. I think they went as far as to recognize what tourism is and what a tourist is.

I think the process is fine when you have all of the players, so when someone gets up—and I heard this yesterday—and says, “But it is the high wages,” then the unions can stand up and say: “Maybe it isn’t. Maybe it is this and this.”

To me, the best example was the cross-border shopping at first, and many of the companies just would totally blame it on high wages in Canada. I made the point that the best example is the auto workers. They are between \$5 and \$7 less to build a car in Canada, based on the benefits. Most of those retailers did not understand that because they were not in the automobile industry, but when the stakeholders get together they have the ability to hammer each person out and come out with a deal, normally. I think that is the process, and that is the process that we both have recommended. I think we can get to a bottom line on that.

**The Chair:** Back to Mr Poirier.

**Mrs Cunningham:** Can I finish? Have we used up all our time?

**The Chair:** Yes.

**Mr Poirier:** You might take some from me if I have some left, Dianne.

Bryan, I want to say that I am sensitive to what you and other representatives of your union have come forward and said. All of us have been sitting here and I am glad you have been here most of the time also, because it shows you how difficult it is for us to sit down together and draw up something, knowing darned well that we cannot think of consensus because there is no consensus in all of Ontario pertaining to this.

I salute both of your groups for being together and working on a continuous basis, as you outlined. Being the oldest serving member here, I can also say that we have often worked together to try to find the best possible solutions.

When you made reference to the three political parties, that kind of surprised me, because when I sit here I do not think about it in those terms. I mean, there is an issue to resolve out there. We heard some very strong positions on both sides. There are no grey zones of opinion, but somewhere in the middle we will have to look at how to resolve this.

I tend to agree with you. I do not think there is much of a relationship between Sunday shopping/working and cross-border, though some people have claimed that in their particular case there was. I cannot waste the time to go and do a doctoral thesis on this to find out exactly what, but I tend to agree, after listening for several weeks, that there is not that much of a relationship.

We will do our best to see what we can do with that, but I want to say thank you, because your union and people like Gord Wilson this morning brought particular points—and National Grocers also, and others—about worker protection.

Sure, it is nice to say that you have a right to refuse, but I think the reality between the principles and the laws we set forward and the reality you people have to live with every day of what it is really like to say, “No, I will not work on a Sunday”—Because of what your union has brought forward, I think I feel much more enlightened as to the difference between what the law will say and what the reality will be on the workforce.

I want to say thank you to you and your union for bringing forward these concerns. If you had not done so, obviously we would be a lot poorer in that particular knowledge. I wanted to make that point, Bryan.

**Mr Neath:** Thank you, and I will say to you, as I will say to everybody here and as I have said to many of our conventions and conferences, you can never give up the fight. When the NDP was elected, some people in our own union said, “That’s it. We can just sit back and go home,” and I told them, “No, you have to fight probably harder now than you did before.” So, thank you.

**Mr Fletcher:** I am going to come back to a few things said today by members of the opposition, that it is about time governments, members of Parliament stood up for their beliefs, and Mr Daigeler saying that members of the governing party are objecting to this.

That is what we believe. Bryan, when we worked together in Guelph on the issue, you know where we were



coming from. I was never in favour of the municipal option and still am not. Maybe we cannot convince the whole caucus, but at least we will try.

I think that is something that goes a long way from previous committees and previous governments, that we said, and the Premier said in the throne speech, we are going to go out; we are going to listen and consult; and that is what we will base it on. If the Premier said that, then I believe him. I think that is what this party wants to do. I think it is a change. Perhaps you can be smug and smile over there and say, "Yes, sure," but I believe that. Maybe I am a little bit naïve, but I do believe in that.

You already explained it quite well, Bryan, the stakeholders getting together. If the stakeholders get together, and we have the retailers, the unions and the other members of government set up some criteria for the tourist exemption areas, is that committee going to be so costly?

**Mr Neath:** No. I do not think the stakeholders committee will cost you more than the room, and you probably have room down in Queen's Park to fit us in. The cost I was referring to would be the cost of not having the municipal option, but the cost of setting up simply a provincial board to deal with the issue once the stakeholders set forth all of the regulations and set forth the criteria, etc.

You have to understand, I do not know all of that, but I understand that if you want to set up another board, the board will cost. If it is a labour board, it costs. If it is the Ontario Municipal Board, it costs. Another board will now cost, and that would be where the cost is, not the cost of setting the stakeholders up. There would be no costs. I would go free, Chuck would go free, we would all go free.

**Mr Gyles:** Bryan is exactly right. As far as we are concerned from the company point of view, there would not be any costs. We would like to have representatives. We would like to have this kind of session. With the frustrations we have gone through and the amount of money we have spent on this thing over the last number of years, it would be a welcome thing for us to attend, believe me.

**Mr Fletcher:** Chuck, as far as the 1988 submission is concerned you stand by that submission today as you did in 1988, because when I remember quoting from it in Toronto, Mr Sorbara informed me—and it is unfortunate that he is not here—that Loblaw's did not stand by that position any more.

**Mr Gyles:** There has been some criticism of Loblaw's that we have done a turnabout, if you will, but in fact that is not the case. We have always stood by that decision. There are a number of avenues that we felt we had to pursue. It is our survival in this thing and we were getting drastically hurt in our business by people who were finding the loopholes, etc.

So in some respects we threw up our hands in frustration and said, "The hell with this; we've got to do something." So we ended up opening and getting into the big battles in that regard. It is strictly through the frustration of the whole thing that we ended up appearing as though we had done a flip, but we really have not done one.

**Mr Morrow:** Yesterday afternoon I had to meet with the Minister of Education so I did not get to see your joint

submission. So to me today this is really historic. We have business and labour basically saying that the legislation is not bad and let's work together and get something done. I am really proud of you for doing that.

Bryan, my first question goes to you. We have heard job gain, job gain, job gain on Sunday shopping. Is it not a fact that during wide-open Sunday shopping at A&P, we actually had a job loss of 200 to 300 jobs, I do believe, and that in most other places the hours per week were cut down by 3.14?

**Mr Neath:** That is absolutely true. Our records show that A&P lost 202 jobs over that particular period and our indication was that Loblaw's went down 3.4 hours. You heard today from Loblaw's saying exactly that.

What you had was a whole time frame where everybody went crazy and people said things they should not have said. People from Loblaw's said things they maybe should not have said. I happened to be on Canada AM doing a show and someone from Loblaw's was there, although not Chuck or more of the important people, saying, "No, we created jobs." It was part of an hysterical time and people went crazy. There just are not jobs that are being created.

There are two points I want to make here. When the people come here and say, "Oh, everybody wanted to work," who were they? They were the corporations. They were the big guys from Hudson's Bay, David Agnew, "Oh, we've got all kinds of people who want to work." I read down in Windsor that the Retail, Wholesale and Department Store Union that has the Bay under contract was just absolutely ecstatic when the law was struck down and the stores were closed. So David Agnew is not speaking for his people.

When they put together the 2,700 people they employed and all the money they made, those are people they have already in their employment and that is the money they already make, including the whole week. So let's not get confused. There are no jobs. There just is not a job. I stand by that.

**Mr Morrow:** Just one more quick comment before I turn the mike over to my colleague Mr Lessard. Chuck, this is for you. I have a really hard time—

**The Chair:** We are running out of time.

**Mr Morrow:** Let me ask my question and we will not run out of time.

I have a really hard time with businesses trying to sell us on the concept that we should be doing shopping on Sunday as a leisure activity. What are your comments on that?

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**Mr Gyles:** Certainly that is not our feeling. There are retailers out there who do believe that Sunday is good for their business. I am not in a position to speak for them. From National Grocers' point of view, that is not our position. We want the common pause day, obviously, and we just do not see any advantages in Sunday shopping.

**The Chair:** Thank you very much, Mr Neath, Mr Gyles and Miss Shaw.

## GRAHAM SCOTT

**The Chair:** We now have a presentation from the Appleby United Church, Dr Graham Scott. Welcome to our proceedings. You have about a quarter of an hour. I see you have a four-page submission. If it is possible, it would be nice for the committee members to pose questions to you at the end of your presentation.

**Dr Scott:** Chairperson, I have a way of reducing this to five minutes. I would like to emphasize that I am speaking simply on my own behalf in this brief; there has not been time to consult with large numbers of people. I believe, however, that my brief is consistent with the official United Church brief that went in in 1988.

I am really heartened by the comment of Allan Pilkey, Solicitor General, reported in the Toronto Star, that the principle of a common pause day is not up for negotiation.

I believe that Mr Pilkey has considerable, if not massive, support behind him in this comment, and I mention only three supports as briefly as I can. The religious traditions which have formed western civilization all stand for one common pause day in seven. Second, the courts have found the Ontario Retail Business Holidays Act to be constitutional. Finally, there was a poll that showed that 57% of the population was opposed to Sunday retailing. Other polls said other things. Those polls were, to my knowledge, often commissioned by interested parties but I have a feeling that the last election may have indicated that the 57% figure against Sunday retailing is rather close to the truth. So I believe that Mr Pilkey has a solid majority of Ontario voters behind him on this issue.

With regard to the precise amendments before us, I would say first that many of the amendments either contradict the principle of one common pause day or give it mere lipservice.

With regard to the amendments to the Retail Business Holidays Act, I can only see local option writ large. The amendment before us says, about municipal councils, in part, "The council's decision is final." That is local option with a vengeance. With local option there is the domino effect and with the domino effect the principle of a common pause day is simply contradicted.

The proposed criteria for tourist exemptions are so general that I would judge only garbage dumps and transfer stations to be ineligible for declaration by an interested local council as a tourist area. I give an example, but I will pass over that.

In brief, the criteria are so general that with local councils making the final decision most of Ontario would be a tourist area. I believe that, in fact, most of Ontario is a tourist area because you can find tourists everywhere in the province. I have been in many places in this province and I have seen tourists all over the place. But the regional municipality of Niagara, a tourist area if there ever was one, was informed in 1989 that only 1.8% of retail sales in the region came from tourists.

So I believe that all the concern about tourism is really smoke and mirrors for getting major retailers open to cater to the Ontario public. It is not for tourists; it is for the Ontario public. Against that plan, religion and law and I think the people of Ontario have spoken and it seems that

the principle of the common pause day is speaking for itself, and so I argue that the tourist provisions of the amendment to the Retail Business Holidays Act are in effect contradictory to that principle of one common pause day in seven.

With regard to the amendments to the retail business establishments section of the Employment Standards Act, I judge them to be lipservice and ineffective. The amendment does little, if anything, to change the inherently vulnerable situation of the lone employee faced with the employer's expectation of working on Sundays and holidays.

The only sure way, in my opinion, to protect these individuals, most of whom are women, is to keep retailers closed on Sundays and holidays and that throughout the entire province. Failure to do that is to provide mere lipservice to the principle of one common pause day in seven.

I wonder if any of you know how many employment standards officers there are in Ontario and how the ordinary worker gets in touch with one of them. After great difficulty I found out that there are 120 and that the government is planning to hire 130 more. But in the greater Metropolitan Toronto area itself there are 2.1 million workers and quite a number of them are in the retail trade.

To summarize, I think that the amendments to which I have referred either contradict or merely pay lipservice to the principle of a common pause day and I would like to make some recommendations. First, scrap the tourist exemptions altogether. Second, amend the Retail Business Holidays Act so that only pharmacies of 1,000 square feet would be allowed to be open on Sundays and holidays, and, I would suggest, increase fines from \$500 to \$1,000 for the first offence and from \$2,000 to anything between \$5,000 and \$20,000 maximum for subsequent offences.

I thank the committee for its patience and attention. I am open to questions.

**The Acting Chair (Mr Kormos):** Thank you, sir. Mr Daigeler, for four minutes, please.

**Mr Daigeler:** Thank you very much, Mr Chairman. You always have the ability to get us right back on track with your forceful interventions.

**The Acting Chair:** I have taken that as a compliment.

**Mr Daigeler:** We will see what the end result is. We will judge by that.

I agree with you, Dr Scott, when you are saying that the amendments here that are being proposed give only lipservice to the avowed intention by the government to institute a common pause day. That is my main criticism, that they are really trumpeting their commitment to their promise in the election, but in reality the tourism exemptions are so wide that pretty well everything can be open.

You seem to be going very far with regard to eliminating tourism exemptions. In fact, you are saying eliminate it altogether. How serious are you about that? Even under the Tories we had tourism exemptions. I do not know when that was originally brought in, but certainly it has been there for a long time. Do you really think that people would accept that?

**Dr Scott:** In the sense that so little real retail business comes from the tourist, people will certainly accept that



unless the poll that 57% of Ontario residents are against Sunday retailing is wrong. If that is wrong, maybe the population does want to have more, but I think the population would like something much clearer. The problem with the law is that when you get too many exemptions you simply get unfairness.

**Mr Daigeler:** And what would you say about the corner stores and flea markets, some of the flea markets that are held by churches on Sundays?

**Dr Scott:** I am not aware of any flea markets that are sponsored by churches on Sundays; certainly not mine. But I think that corner stores in the sense of family-operated stores are quite different from stores that employ large numbers of people, and chain stores. Quite frankly, my own personal position is that most of them could very well do with only six days of work a week.

1420

**Mr Daigeler:** You would basically close them as well. You were referring to family-owned corner stores. The presenters just before you are the owners of Hasty Markets. They consider themselves a corner store but certainly not—if you consider Weston family-owned, I guess it could qualify under that criterion, but I do not think it would fill the objective you had in mind. You really would want to be very consistent with your own position and say pretty well everybody should be closed.

**Dr Scott:** That is right.

**Mr Carr:** I was interested in point 4 where you say Mr Pilkey has considerable, if not massive, support behind him in this comment of having a common pause day. I think you may be aware of what has transpired. I do not know whether the committee members know, but last night in Sarnia they voted to open the entire community as a tourism area. Since we have gone around, Collingwood has opened, Thunder Bay said it was going to do it and Kenora and Sault Ste Marie. Notwithstanding the statement made by the Solicitor General and in fact the Premier, and as outlined in the throne speech as well, many people are saying very clearly that unless there are changes like some of the ones you put in point 12 there, we are going to have Sunday shopping in the province. I take it that is what you see happening as well if there are no changes.

**Dr Scott:** I think it is a very distinct possibility, and the more exceptions you have, the more exceptions you are going to get. There will be a domino effect that way. That is clear evidence of precisely that.

**Mr Carr:** Your point 12(a) with regard to scrapping the tourism exemption: As you know, I suspect that was the biggest difficulty for the government when it formed it, and you may have heard some of the recommendations of some of the other groups that say, "What we need to do is sit down together and hammer those out." Are you saying to eliminate them because you do not feel they could be hammered out significantly for a tourist area, or is it because of some other reason?

**Dr Scott:** Since 1986 I have been seeing tourist exemption request after tourist exemption request, not the least of which was a request from the esteemed city of Welland

before the Niagara regional council. It just seems to me that it is like Pandora's box, this particular exemption. It just seems to have more and more coming out of it. It seems to me the only way you are really going to get a handle on it is by closing it.

With regard to your little souvenir shops and things like that, I think that having a maximum number of square feet in the range of, say, 1,000—let's say this room is 2,000—it is still a big shop. I think you might get a handle on things. I do not know where the 7,500 square feet is coming from. I saw it in one of the minister's remarks. I do not see it in the legislation, but I may be blind.

**Mr Carr:** It is in the regulations.

**Dr Scott:** I see. I think that is very much opening everything wide.

**Mr Carr:** With regard to some of the other comments of some other workers, as you know, one of the reasons they said they wanted to bring in the common pause day was to protect people from having to work on Sundays. Do you think that can be brought in? And there is some talk of trying to bring it in for other workers now to help those workers who are not covered. Some of these measures that are being introduced would help protect some of the workers. Do you think that can be done in other sectors? Would you like to see something brought in so that other sectors, for example somebody at Stelco who might have to work, could opt out if they wanted because of religious reasons as well?

**Dr Scott:** Yes, I understand the question. I think it is quite complex. I would like to think very carefully before I gave an answer on that. It is sufficient, I think, to say that the Ontario Retail Business Holidays Act is a model but it is not the only way in which to ensure rights for workers. I think that unions—and Stelco has a union—are very effective in ensuring rights for workers. I think that is another way of doing it.

**Mr Carr:** Many of the groups have come in and said they wanted to have pharmacies open on an emergency basis. Maybe you heard the earlier presentation where they said a lot of them are not pharmacies, and I think we got some information distributed to show that. Outside of limiting to 1,000 square feet, is there any other way you see that we can do it, that we could have it for drugs that are needed that I think everybody says are essential, but without getting into this square footage?

**Dr Scott:** Oh, yes. At one time in Ontario I think pharmacies would take turns being open on a Sunday. I know when I lived in Strasbourg, France, every quartier had one pharmacy open on a Sunday. Everyone knew which one would be open and you simply went there. It worked very satisfactorily. We had a young baby who needed a lot of medicine and we were never in any trouble. I think that is one way of ensuring that.

The main point about the 1,000 square feet is that many pharmacies today are not really in the pharmacy business. They are competing with grocery stores and other shops.

**Mr O'Connor:** If you have been around here for a little bit and listened to some of the presentations, you realize we are in put in the position of trying to decide

something that has a tremendous impact on very many people in the province. One thing that seems to be pointed out to us and that there is a real contradiction in is the tourism and the fact that tourism is an important industry to the province and how it can be enhanced. Would you agree with the fact that what we need to do perhaps is to look at sitting down with the stakeholders and looking at the tourist criteria to see if perhaps that is not an area that needs to be tightened up, as opposed to throwing it out completely and ignoring the retail portion of tourism?

**Dr Scott:** When I heard that and saw the union and National Grocers together, I thought that there was room here for some very constructive work.

**Mr O'Connor:** Perhaps we should get the stakeholders together and talk about the retailing aspect of tourism.

**Dr Scott:** I would think that would be an appropriate thing to do. Whether you would get an agreement I am not sure, but it is worth a try, do you not think?

**Mr O'Connor:** For sure. We have seen a broad range of opinions.

**Mr Mills:** Usually I do not get very much to say here because I am the parliamentary assistant to the minister and I sit back here and listen to all the negative things people say, make notes and hopefully talk to the minister about them later on down the road. However, I must tell you, and clear up a misconception. There are three principles here that are not open for discussion. You mentioned one. The position of the government is that we are not negotiating the common pause day here. That, in law, has been upheld by the Constitution that is in place. The second part that is not up for negotiation is the protection of retail workers, and the third part is that we are dedicated to enhancing the family perspective in Ontario, the opportunities to get together. I must say that, contrary to a lot of things you have heard here, I have great confidence in Bill 115 and its ability to address many of the issues that have been brought up here.

**The Acting Chair:** Dr Scott, do you want to respond or wrap up briefly?

**Dr Scott:** Could I simply ask a question? Are 250 employment standards officers capable of fulfilling that mandate?

**Mr Mills:** I am going to say that we must have some faith in business and that it is not out there to circumvent the law. I think we have to address that. Many businesses and companies are very reputable and respect the law. For people to think that the majority of businesses are not going to respect the law would be bad judgement, I think.

**The Acting Chair:** Notwithstanding that, your question, like the rest of your comments, Dr Scott, is well made and we all thank you very much for taking the time to come and talk to us this afternoon. Please take care.

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#### HAMILTON AND DISTRICT LABOUR COUNCIL

**The Chair:** Mr Adamczyk from the Hamilton and District Labour Council. Good afternoon, Brother Adamczyk. Could you introduce your colleague.

**Mr Adamczyk:** This is Maureen McCarthy, who is the vice-president of the Hamilton and District Labour Council.

**The Chair:** You have about half an hour. Please take as much time as you wish, but I am sure the members will be eager to pose questions to you, sir.

**Mr Adamczyk:** The Hamilton and District Labour Council is pleased to have an opportunity to appear before this committee to present its views on the proposed changes to the Retail Business Holidays Act regarding Sunday shopping. The Hamilton and District Labour Council is composed of 130 affiliated unions and represents over 30,000 workers in the Hamilton area. We are affiliated to the Ontario Federation of Labour and chartered by the Canadian Labour Congress. The Hamilton and District Labour Council has a long history of supporting and promoting the concept of a common pause day for workers.

It is interesting to note that in the 1870s, organized labour formed the first nine-hour league right here in Hamilton. Their goal was to reduce hours of work, thereby allowing workers the then unheard-of luxury of leisure time with their families. It is this principle that we wish to address today. We appreciate the government's efforts to bring forward legislation which will protect the rights of most workers in Ontario to a common pause day. In order to ensure this right, we would like to direct our comments to several key areas that we feel need to be clarified within the proposed legislation.

**The municipal option:** As with the legislation implemented by the previous Liberal government, decisions to allow stores to open on Sundays and holidays remain in the hands of municipalities. The amendments propose regulations and criteria with regard to tourist exemptions, yet these regulations and criteria are so broad that almost anyone could fit the guidelines for a tourist exemption. This could result in wide-open Sunday shopping and Sunday working across the province. We suggest that the needs of tourism in this province can be accommodated while at the same time ensuring a common pause day for most Ontario workers by making the following changes.

1. The council of a municipality may permit retail establishments to open on Sundays and holidays only where it is essential for the maintenance or development of a true tourist area. In addition, there should be a mechanism whereby interested parties can appeal a decision of a municipality. This would ensure that retailers cannot use the guise of a tourist area to get an exemption.

2. Stores that are allowed to open must be limited to no more than 4,000 square feet, and at no time should the number of persons working on Sundays and holidays exceed four.

3. The government should establish a committee of those affected stakeholders to provide input on a new set of guidelines regarding tourist criteria. These stakeholders must include representatives from all the affected groups, including labour.

**Drugstores:** When drugstores were first allowed to open on Sundays, it was to provide for the emergency pharmaceutical needs of the public. Since that time drugstores have expanded their operation to include large selections



of products, including housewares and foodstuffs, to the point where in some cases only 20% of the store's sales are of a pharmaceutical nature. There is ample opportunity to purchase these types of sundry products in the many convenience stores that are allowed to open.

We feel this situation must be addressed in the new legislation, as this is what leads more retailers to claim they do not have a level playing field. We suggest that the total area used for the selling of products and services should be less than 2,400 square feet, and that no more than four workers shall be engaged in the service of the public. This includes the pharmacist who must be present during the business hours. This would ensure that the emergency needs for medication are provided, which is the real reason for drugstores remaining open on Sunday.

**Enforcement:** If a retailer is convicted of opening illegally, the proposed legislation provides a minimum fine of \$500 on the first offence and \$2,000 on the second. Although we support the principle of minimum fines, we do not believe this is enough of a deterrent. In some cases retailers may consider this a licence to operate. The Hamilton and District Labour Council would like to see a minimum fine of \$10,000 for a first offence and \$20,000 thereafter. Further to this, any affected or interested party should be allowed to make application to the Supreme Court for an injunction ordering a retail establishment to close or comply with this act. This would serve to deter retailers from opening illegally on Sundays and holidays, in addition to lowering the cost of enforcing the legislation.

**What is a retail business?** In many areas, giant retailers are calling themselves membership clubs in order to circumvent the Retail Business Holidays Act. These membership clubs must be included in the definition of a retail business and subject to the same law as other retailers.

**Common pause day:** In order to ensure that Sundays and holidays remain common pause days, we must ensure they remain (1) days on which most businesses are not open, and (2) days on which most persons do not have to work. The Hamilton and District Labour Council believes that the amendments we have proposed will recognize the right of workers to a common day of leisure which they can spend with their families and also fulfil the needs of and promote genuine tourism.

The Hamilton Spectator reported on Tuesday, August 6, 1991, that industry is no longer our city's top employer. Factories have been replaced by stores and shopping malls; 28% of Hamilton's workforce is now employed in the retail sector.

But when we examine these two areas of employment, they simply do not compare. Retail jobs by and large are non-union, low-paid and often of a part-time nature. Most of these jobs are filled by women who in these recessionary times have no choice but to work outside the home. Their income is necessary for survival, not for luxuries. Many people in retail find that full-time work is not available, so they hold two and sometimes three different jobs in order to make one full-time job. These people count on that one day where they know they will not be required to work. The only way to ensure this is if the majority of stores are closed on Sunday.

On November 12, 1991, when the electorate of the Hamilton-Wentworth region go to the polls, they will be asked, "Are you in favour of Sunday shopping, yes or no?" They will not be given the opportunity to choose whether they want to work on Sunday, just shop. Should this plebiscite come back in favour of Sunday shopping, does that mean Hamilton-Wentworth regional council is prepared to declare the region a tourist area? Some municipalities have already done so. We must prevent the tourist criteria from being used to circumvent the intent of the Retail Business Holidays Act.

In conclusion, the Hamilton and District Labour Council would like to thank the committee for allowing us the opportunity to express our concerns regarding the proposed legislation on Sunday shopping/working. We feel the proposed changes to the Retail Business Holidays Act are a step in the right direction, yet we urge this government to consider our recommendations in order to ensure that the right of retail workers and their families to a common pause day is protected.

If I could just make a couple of comments before we answer any questions, most of the activists in the labour movement, and I can speak for Hamilton, usually go seven days a week anyway. It is hard for us to get any quality time with our families. Besides being the president of the labour council, I am also a Steelworkers staff representative, which means that I keep pretty busy.

To me, spending a Sunday walking through a mall with my family is not what I call quality time.

Not only that, previous to being hired full-time by the Steelworkers, I worked at Stelco, and I knowingly hired on to work in a seven-day continuous operation. That meant that I worked more Sundays than I got off. When I was a bit younger, it was not too bad to work the Sunday. I think our premium at that time at Stelco was a dollar and a quarter an hour, which I guess comes out to about, what, \$10 extra for working a Sunday. Even under the collective agreement, on a Monday, for a stat holiday, we would get paid double-time and a half, and that was not too bad in my younger days either.

But it got to the point after about 11 or 12 years at Stelco that, first, Sundays mean a lot to me as a family man. You miss the small things of watching your children grow up, and let's face it, baptisms normally do not happen on a Tuesday or a Wednesday morning; usually they are on Sunday. Family get-togethers do not happen on a Tuesday or Wednesday, normally it is on a Sunday, because society has been geared to life around the weekend. Everybody knows the term, "Thank God it's Friday," because here is the weekend, we have got time off.

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Even on double-time and a half—let me talk about the premium—it got to the point for me as an individual, and a lot of the people I worked with, the double-time-and-a-half day we would rather have off, because if a Monday was a stat holiday, we were either working or it was our regular day off and we got a premium for it, but a lot of people were prepared to have another lieu day off somewhere else down the line.

The common pause day is important to me as an individual and it is also important to a lot of the people I represent in the Steelworkers. I think the Sunday work and the weekend work for a lot of people causes strains on marriages. I think if you read in the papers nowadays you see everybody is talking about the breakdown of the nuclear family, and how it is so important that somehow we have got to get back to the old type of family relationships. While their parents are off working on a Saturday or a Sunday, our children are looking for guidance and companionship from either the father figure, and in a lot of cases nowadays, because of single-parent families, the father is not around, they are looking for their mother to be around.

Also I think that in the reference in our submission about where the jobs are being created, in this area anyway, they are not in the manufacturing sector, because Hamilton is being devastated by this recession. In the last four years as a Steelworkers staff representative I have negotiated four closure agreements, and it is not a happy thing to go through. The people, as we try to get them retrained and into other employment, are not going back to the workforce to the \$12- and \$13- and maybe \$14-an-hour jobs that they previously held. As the submission says, a lot of the jobs being created are in the service sector, where we have a lot of women who are working in those sectors. Basically what we have in a lot of cases in this area is the working poor, which is I guess another issue.

Those are my opening comments and we will be prepared to take any questions from anybody.

**Mr Poirier:** Thank you for bringing us the perspective of what is happening in Hamilton. Like I told Bryan earlier, it is very difficult for us, because we hear very different opinions on this, and we will do our best with what we can. Obviously Hamilton has been quite affected by the recession, as you mentioned, and we will try to take into consideration the points you brought forward. You are quite correct about what is happening to the families and whatever. We all see that, and some of us here actually go through it, so we know very well what you are talking about.

Even though it was brought up this morning about the rotation and the seniority of members of the Steelworkers, for example, that is also a very difficult situation, whereas some of the longest-serving members do not want to work on a Sunday any more, and rightly so. That is what you have witnessed also with your work? Have you seen that in other sectors also?

**Mr Adamczyk:** Where the senior people do not want to work?

**Mr Poirier:** Yes.

**Mr Adamczyk:** I have not experienced that myself, no.

**Mr Poirier:** But apart from the Steelworkers and other unions, have you seen that?

**Mr Adamczyk:** Not unless Maureen can answer that.

**Ms McCarthy:** I believe you are referring to Bob Sutton's comments earlier this morning.

**Mr Poirier:** Correct.

**Ms McCarthy:** Just to state a bit of my background, I am on staff with the UFCW. I was hired in October of 1990.

Before that I worked 13 years with one of the major retailers. I think preferred hours is something we see in the industry and I think it is something senior people would like to have. It is certainly something you see in retail. So I would imagine that in most industries you would see that for senior people. I do not know if it is possible, but the desire is there.

**Mr Poirier:** Globally from the labour council, what have you seen about workers' attitude about Sunday? Those who do work on Sunday, they want to or they feel forced to, or what have you found?

**Ms McCarthy:** They do not want to.

**Mr Adamczyk:** Going back to my own experience at Stelco, it was a job, and like I say, I hired on, but if I had my druthers, if somebody said, "How would you like to work Monday to Friday?" I would take that. I do not think anybody really wants to work a Sunday.

**Mrs Cunningham:** I am looking more at the technicalities of one of your recommendations here, and I would also like to thank you for very much for appearing before the committee. I am trying to pursue the issue of the tourist criteria. You have taken the same stand as the Ontario Federation of Labour and others, and I certainly think it is a good beginning.

My first question would be, do you think the existing Bill 115 in fact does protect a common day of pause? Second, if we take your advice that we set up the tourist criteria, in your view that would then be a provincial responsibility with regard to a set of rules or laws or regulations, that at least we have some consistency across the province? Is that your intent? Is it the consistency, or is it that we then could in fact have a common day of pause?

**Ms McCarthy:** As far as the tourism criteria are concerned, we do believe that Bill 115 addresses the issue and actually defines the issue. What we would like is a stronger definition. As far as a body to regulate that is concerned, what we would like to see is an appeals procedure set out for interested parties to be able to appeal decisions.

It is still in the hands of the municipalities. I think it was stated in the brief that we have seen municipalities that have declared themselves tourist areas. In the Niagara Peninsula we had an experience where they wanted to declare a vacant lot a tourist area because somebody wanted to build a mall there.

What we want to see is a clear definition of what a tourist is, and when we are talking about businesses being open for the reason of tourism, we are talking about true tourist-type businesses where somebody goes in and buys a souvenir from Ontario. That is why we stayed at the 4,000-square-foot limit.

**Mrs Cunningham:** I think it is interesting. I think that in itself, the 4,000 feet, will be controversial, just as the size of the drugstores were in the last round. I suppose one of the problems of doing business in Ontario is that we have seen so many changes in the last three or four years. It is sort of hard to gear your industry to the rules. Let's hope that we come up with some solid resolutions. But given the position of your party two years ago where you



were against the municipal option, I am just wondering why you seem to be in favour of it this time.

**Ms McCarthy:** Good question. I guess Bill 115 is something that is improving on what the Liberal legislation was, where municipalities had the right to just open it wide up or not. When we talk about a central body to appeal, we could be talking about the MBO. The logistics of that are something that certainly must be debated, and of course—I think Bryan was talking about it earlier—there is a certain cost attached to that. That is something that has to be considered when you are talking about the regulations. But I think the point remains that if you are going to allow exemptions for tourism, you must have some appeals procedure in place where interested parties can voice their views on what a municipality does.

**Mrs Cunningham:** I agree and I think that it has to be the provincial government's responsibility. The OMB was considered in the last round and ruled out. I think you meant the OMB, did you not?

**Ms McCarthy:** I did.

**Mrs Cunningham:** It is all right. I do not know how we keep up with all these titles.

Therefore, we do have some legislation in New Brunswick, where they actually have a separate board. It happens to be the liquor control board there, for the sake of not wanting to duplicate bureaucracy.

Just since you mentioned Bryan, I had a chat with him afterwards. The amount of money municipalities are paying just to put ads in newspapers and hire staff to listen to the numbers of presentations before special standing committees of the municipal governments—we all pay for that. I think it would be much less expensive to have a single body that people really had to think about going before, because it will be costly, before they start using the appeal process. I just thought you might have gone a step further, that is all. Maybe you will as a result of these hearings, and I am sure we will have to consider it as well.

**Ms McCarthy:** That is certainly very important. Every municipality is different, and before any exemptions are allowed, public input has to be considered before that is done.

**Mr Morrow:** Thank you very much, Bryan and Maureen, for that fine presentation. Some 30,000 members in Hamilton and District Labour Council is a heck of a lot of people, so you are obviously here representing an awfully large group of people in this city.

I just wanted to clarify something that I have always believed in and I still believe in, and that Bob Sutton believed in this morning, that the municipal option is basically for the birds. Can I clarify that labour council also agrees with that stand?

**Ms McCarthy:** It was mentioned quite a few times today that we have all changed our position a great deal since as far back as two years ago. If the municipal option is something we have to live with, then I think we have to have a mechanism to deal with that.

**Mr Morrow:** If we had our druthers, though, we would probably not like to live with that.

**Ms McCarthy:** Probably not.

**Mr Morrow:** We know Hamilton is having a plebiscite on Sunday shopping. Do you really feel there should be another line in there? What do you feel about Sunday working?

**Ms McCarthy:** Certainly. I think that would give a true indication of how people feel on the issue. I think the results of this plebiscite will be interesting to see, though, considering the figure of 28% of people in Hamilton employed in the service sector.

**Mr Morrow:** You are right. Thanks very much.

**Mr Fletcher:** Thank you for your presentation. Maybe they should put down, "Will city council work on Sunday?" also and see how far that goes.

It is great. Today has been one of those days where the chamber of commerce came in and made a presentation, and when they were asked, "Would you like to see a committee set up to set the criteria?" they said, "Yes, we would." We had the United Food and Commercial Workers Union saying, "Yes, we would." The Ontario Federation of Labour, the Steelworkers, the labour council, Loblaw's: "Yes, let's set something up. Let's get together and work on this." Appleby United Church, the same thing.

It is great to see there is this level of co-operation we can strive for, that we can hit. The problem now is to put it into action and try to get it going. I know that you are not going to let us stop here, that there is a lot of work to do and a lot of lobbying to do.

One thing, though. The chambers of commerce are coming at us across the province, saying: "Free enterprise. Let the marketplace dictate." Why not? Why does the labour council not agree with that position, or does it?

**Ms McCarthy:** I do not think the marketplace does dictate wide-open Sunday shopping, and there are several reasons for that. The people from Loblaw's said they found that there was a novelty at the beginning and that people went in there just to check it out, but after being open for a while, business dropped off. I do not think the business is there.

The point was also made that people only have so much money to spend. Whether they spend it Monday to Saturday or seven days a week, they will not have any more money to spend. Our experience during the time that the stores were open—and I was still employed with a retail food store at that point in time—was they were ghost towns. People are just not in there, and the people who are in there are going in there to buy something like milk and bread that they can get at a convenience store.

**Mr Adamczyk:** Let me just respond to the free-enterprise issue. I guess in some ways the free-enterprise system is good. We are facing unemployment here now. I was going to say that it provides work for a lot of people, for most people, but still we are hurting, and I do not think the hurting is over yet.

But part of the free-enterprise system is also advertising and marketing. When a new product comes on the TV, they tell me, the consumer, that I need this brand of toothpaste. If I do not have it, I do not fit in or I have bad breath or whatever. The same with the Sunday shopping. People are telling me as a consumer that here are all the benefits of Sunday shopping, without taking into consideration my

family life. To me, they are trying to make a decision for me. I think we have to get back to putting a little bit of emphasis on the family and that common pause day.

On the issue of talking, getting a group of people together from different sectors to talk about, walk through, maybe define what a tourism area is and what some of the regulations should be, so often we have been hearing as a labour council lately about empowerment back to the people, in the words of stakeholders over the years. I think that is one way of empowering people to have some decision based on, perhaps, the direction the municipality is going and how some of the laws are going to be changed.

**Mr Fletcher:** I think you are absolutely right. I think it is time to get some people back into the decision-making process.

#### CANADIAN LORD'S DAY ASSOCIATION BRANTFORD AND HAMILTON AUXILIARIES

**The Chair:** We now have a presentation from the Canadian Lord's Day Association: Jan Droogendyk, Fred Jonkman, Allan Brokking and Alvin Brunsveld.

**Mr Jonkman:** We would like to thank the standing committee, for the opportunity to come here and to speak to you. We represent the Canadian Lord's Day Association, Brantford and Hamilton auxiliaries.

My name is Fred Jonkman. With me are Mr Jan Droogendyk, Mr Alvin Brunsveld and Mr Allan Brokking.

The Canadian Lord's Day Association is a Canada-wide association of people who desire to uphold the sanctity of the Lord's Day, also called the Christian Sabbath or Sunday. Auxiliary branches are formed within the network of the association. These then work on a localized level under a central or national council. Our membership ranges across different denominations and scales diverse areas of Ontario and across Canada.

The aims of an auxiliary branch are, first of all, to uphold the sanctity of the Lord's Day upon the basis of the scriptural declaration that one day in seven was blessed and hallowed by God during man's innocence; that it became enshrined in the 10 commandments, is confirmed throughout the Old Testament, is now observed as the first day of the week to commemorate Christ's resurrection from the dead and since called the Lord's Day, with divine authority and of perpetual obligation.

Second, we aim to educate public opinion and organize Christian effort towards promoting the aforementioned purpose of preserving the sanctity of the Lord's Day and towards securing regular family attendance at the public worship of God throughout that holy day.

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Third, our aim is to promote and uphold the beliefs set forth in our basis of constitution; namely, belief in the triune God, the essential deity of the Lord Jesus Christ, His incarnation and virgin birth, the truthfulness of all His words, His atoning vicarious death upon Calvary for sin, His bodily resurrection, His ascension and His coming again, and belief in the whole Bible as the inspired word of God.

Responsibility and accountability to keep the Sabbath holy: As auxiliary branches, we endeavour to point out that

all mankind is in duty bound to observe the sanctity of the Lord's Day, for violation of the observance of the Christian Sabbath is detrimental to the welfare of both soul and body, society and country, but above all, contrary to the first and great commandment, which is, "Thou shalt love the Lord thy God with all thy heart, with all thy mind and with all thy strength." It also brings no justice to the second, which reads, "Thou shalt love thy neighbour as thyself." It is found in Matthew 22: 37-39.

With respect to the observance of the Sabbath particularly, we find in the fourth commandment: "Remember the Sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: But the seventh day is the Sabbath of the Lord thy God: in it thou shalt not do any any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates. For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the Sabbath day, and hallowed it." Exodus 20: 8-11.

The keeping of the Sabbath is valid for all mankind. The word "remember" points back to Creation when Adam, before his fall into sin, lived in accordance to the pattern of God, who rested on the seventh day from all His work, blessed and sanctified it. The word "remember" also points to the past, present and future rest purchased by Christ's death and resurrection. As we find in the Bible the sanctity of the Sabbath day, we also find the day being changed from the seventh day to the first day. The day has changed, but God's laws are unalterable.

In Revelations, the apostle John was "in the spirit on the Lord's Day," being the first day of the week, set aside to commemorate the resurrection of the Lord Jesus Christ, which is the cornerstone of the Christian faith and an open door to a new Creation purchased by Christ's death and resurrection. He has the authority to do this, for He is God first of all and also Lord of the Sabbath.

It is not the intent of our committee to seek to rest the blame squarely on the shoulders of the politicians of today or the current government. We admit that the fault that so many desire business to conduct a full week of operation and that people wish to shop and not worship God is that we, as a nation and personally, have not kept the Sabbath holy as we should. We cannot call the changes that have occurred over the years with respect to the Sabbath day as advancement, but sadly must call it decline.

In light of all this, we would urge you as a committee to advise the government against the legislation of Bill 115 since it does not conform to the scriptural observance of the Lord's Day. Moreover, not only do those in authority have personal responsibility and accountability, but also as rulers have governmental authority in making decisions and passing legislation affecting all of society. The laws passed must be scriptural.

For a proper functioning of society, it is crucial that our leaders do not usurp authority beyond the boundaries and limits that are given by God and that the citizens obey all the laws that are in accordance with scripture. In Romans 13, we read: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that



be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God...For he is the minister of God to thee for good."

We ask that as a committee, you spell out to the government that it is necessary to view with concern the changing trends in regard to the sanctity of the Lord's Day and to do what is in their power to curb these alarming changes, channelling them in the stream of biblical conformity.

**Mr Brokking:** Effects of disregarding the sanctity of the Lord's Day: In today's pluralistic society, with so many conflicting views, it is necessary that Christian principles for both life and practice in commemorating the first day of the week be held high in our land.

To give more access to Sunday shopping would result in:

1. Bringing the judgement of God on us both personally and nationally.

2. Bringing a society forward in seeking only monetary gain, while leaving biblical morality and truth behind, "For what shall it profit a man if he shall gain the whole world and lose his own soul?" Mark 8.

3. Bringing conflicts between employers and employees, municipalities, councils and legislators, to name just a few, which are harmful to society.

4. Much physical stress and hardship; our body is made to need one day in seven for rest.

5. Less communication between parents and children. Parents are busy with their businesses or shopping and children are sent to day care or relatives, lacking the parental guidance required to rear a child with proper values.

6. Less time for husband and wife to share their life and love for each other, each seeking job satisfaction instead, resulting in higher divorce.

7. Inability to cope with the excessive fast pace of life, having no true happiness, showing mental fatigue resulting in increased nervous breakdown, depression and suicide.

After all this, no more wares will be sold in a seven-day shopping week than in a six.

Benefits of keeping the Sabbath holy: It was an atheist who said, "If you would destroy Christianity, you must first kill Sunday." This is what is taking place in our land. Sunday is a Christian holy day. To deny this is to deny God's word, our country's Christian heritage, our history books, our former parliamentarians' beliefs, as well as our own conscience. Sunday shopping is a religious issue. To leave the guide of biblical absolutes results in degradation and chaos. The off-colour phrase, "Shop till you drop" does exactly that. It drops all biblical rule and deprives itself of the favour of God.

"If thou turn away thy foot from the Sabbath, from doing thy pleasure on My holy day; and call the Sabbath a delight, the holy of the Lord, honourable; and shalt honour Him, not doing thine own ways, nor finding thine own pleasure, nor speaking thine own words: Then shalt thou delight thyself in the Lord; and I will cause thee to ride upon the high places of the earth, and feed thee with the heritage of Jacob thy father: for the mouth of the Lord hath spoken it." Isaiah 58: 13-14.

How would we dare state in view of biblical truth that the Lord's Day, Sunday, is not a religious but is only a secular pause day? Is it not undeniable?

**Mr Droogendyk:** We would like to make some practical remarks about Bill 115 regarding the amendments to the Retail Business Holidays Act and to the Employment Standards Act.

Part 1, in regards to the Retail Business Holidays Act: Amended subsection 4(1) states, "Despite section 2, the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism." In the first place, does this take all power away from section 2, as well as section 3? We wonder what logic there is in establishing a law and then defeating its purpose, especially in the same act. In the second place, we ask how far will this be stretched? When we start developing and promoting tourism we keep other people from their pause day.

Subsection 4(2) states, "The council in passing a bylaw under subsection (1) shall take into account...that holidays are common pause days and should be maintained as common pause days." We ask, how can a municipality permit retail business establishments to open on holidays and on the Lord's Day, and yet maintain that such a day should be a common pause day? We think that the common pause day which you are proposing will lose the common aspect in a very short time, especially when we take subsection 4(3) into account.

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Subsection 4(3) deals with the tourism criteria. We feel that the regulations made under this act are open to a wide interpretation. Any retail business could qualify, for each municipality has its own attractions, be it cultural or ethnic. Think of Hamilton with its large Italian population, or of Brantford with its Bell telephone and in the near future the opening of an interactive communications complex. There is also the possibility of Christmastime as a theme exemption.

Subsection 4(10) governs the regulations which can be made by the Lieutenant Governor in Council. We are afraid that when the Lieutenant Governor in Council can make any other regulations despite the regulations set out in this act, it would be possible to have different regulations for each municipality.

Subsection 4(11) states that the Lieutenant Governor in Council "may classify retail business establishments and may prescribe different tourism criteria for the different classes of retail business establishments." This is an open ballpark. What are the criteria based upon? Are they patterns of travel or an historical base? Almost every place has historical or natural attractions. Does this make it a tourist area? It is obvious that it would create a snowball effect and all of Ontario would become a tourist area.

Clauses 4.2(a) to (f) deal with the contents of the bylaws and the regulations. These sections could prove to be very discriminatory. How could it be justified to allow, for example, one business to open up for business and not the next one? Bylaws could allow businesses to be open on Sunday, the Lord's Day, and not on other holidays. So, again, what will happen to the idea of a common pause day?

Subsection 7(3.1) states, "The minimum fine for an offence under this act, other than for a contravention of subsection 2(2), is \$500 for a first offence and \$2,000 for

any subsequent offence." This is definitely not a deterrent for businesses to break the law. As a matter of fact, the meagre fine encourages them to do so. Business profits will easily offset these fines.

**Mr Brunsveld:** The Employment Standards Act: Subsection 39e(2) states there are certain exemptions. We, as the Canadian Lord's Day Association, feel all businesses should be closed on the Lord's Day. In a reference to section 39eb we believe every employee should have the right to refuse any type of work on that day for religious reasons, with the exception of works of necessity and of mercy.

Section 39ec states that employers cannot take any disciplinary action against employees who refuse to work on the Lord's Day. We support this section of the Employment Standards Act, but we think that it will be very difficult to enforce. Some employers can just reduce the number of hours for workers, especially part-timers who refuse to work on Sundays, or they could even fire employees without giving a reason.

Section 39f deals with what can be done when an employer contravenes section 39ea or section 39ec. It will be a difficult and very subjective decision to be made by the employment standards officer, especially since the law is full of loopholes and has no teeth. Furthermore, another employment standards officer could come to a totally different conclusion as the law is not specific.

According to a recent article in the Brantford Expositor, a shoe store employee was fired for refusing to work Sundays. Julie Manuel lost her job as assistant manager at a Kinney shoe store in London last July. She has now been ordered reinstated with back pay and interest, according to the Ontario Ministry of Labour. Manuel filed a complaint to the ministry, and George Adams, a law professor at the University of Ottawa, was appointed referee. He held hearings in April and May of this year before ruling in June in Manuel's favour.

Adams ordered her reinstated partly because the employer fired her without first taking the dispute to the employment standards branch, as required under the Employment Standards Act. In addition, the Ontario Human Rights Code prohibits discrimination on the basis of creed. The company should have made every effort to accommodate Manuel's request not to work on Sundays, the ruling said.

It will be a difficult decision for Manuel whether to take her job back or to accept a severance package. Do you not think that the unity between employer and employee will be gone?

We, as the Canadian Lord's Day Association, feel that Bill 115 would do more harm than good. We believe there should not be any exemptions for businesses to open on the Lord's Day. There should be one such law which requires all businesses to remain closed. Such a law would be much easier to enforce. We think this bill would not stand up in court since there are too many open areas which could easily lead to discrimination.

Our auxiliary branches of the Canadian Lord's Day Association would strongly advise our governing officials to produce legislation which conforms to the infallible

holy word of God, for He alone can bless and prosper this rich province.

We would like to thank you for the opportunity to present our views on the behalf of the Wentworth-Brant auxiliaries of the Canadian Lord's Day Association, and we welcome any further questions.

**Mr Daigeler:** I am just wondering what the Canadian Lord's Day Association is involved with other than the relatively rare occasions to make a presentation to a committee such as ours. Do you have any other objectives? What does the association work for?

**Mr Jonkman:** The association in itself is a young association. We started in 1986, and the first few years have been basically trying to get organized and trying to gather members. Canada being a big country, we are working Canada-wide, but here in Ontario, of course, we have auxiliary branches. The idea is to continue to keep abreast with the government policies on Lord's Day and the changes that are being made but also to educate the public, so we are presently printing pamphlets, little books, and that sort of stuff to instruct people on our biblical viewpoint on the Lord's Day.

1520

**Mr Carr:** The question I have relates a little bit along the same lines of what your association is doing. There are many people who say that once Sunday shopping comes in you can never go back, and that was the same argument when movie theatres opened and ballparks and so on. I was just wondering how successful you have been in places like British Columbia, to go into the people to have Sunday as Lord's Day and not have Sunday shopping. Are you meeting with much success out in some of the other provinces? Where are you at with that?

**Mr Jonkman:** I would say that is a difficult question to answer in one sentence because as a council that began with members here in Ontario, Canada-wide we are trying to establish contacts with other people throughout Canada in organizing in this way. We do have a group out in British Columbia which at the same time we hope remains adhering to our constitution. At the same time, we leave them to work on their own within their own provinces because of the fact that every province has different laws, different regulations, different standards, and so forth.

For us here in Ontario, we are concentrating on Ontario. That is why we are here. To say exactly what they are doing in BC, we do not really know. In the other provinces, we are still trying to get contacts.

**Mr O'Connor:** I want to thank you for coming here and making your presentation. If you have been here for a while you realize that the task before us is quite onerous. I noticed on page 6, number 3, you mention that we are going to bring "conflicts between employers and employees, municipalities, councils and legislators." I just want to point out that the purpose of the standing committee touring through the province and trying to get some input from people is not to promote more conflicts but to try to come up with a comprehensive piece of legislation that we all have some very strong feelings on, and the feelings that have been brought forward will all be part of that. So we



try to develop it and do it with as little conflict as possible, and you have helped us by bringing and making your presentation, as so many presenters have as well. I wanted to thank you for coming, and I just try to wrest some of those fears aside.

**The Chair:** Thank you very much, gentlemen, for your very studied and carefully prepared presentation.

**Mr Jonkman:** If I could just make one closing remark, we as an association, of course, in coming here noticed right away people with a button saying, "Say No to Sunday Shopping." I think that is in a brief way what we would like to see, that the province be very clear in closing down Sunday shopping so that there is no conflict, so that people do have that one day set aside for worship. We are not forcing anybody to go to worship but we think everybody should have that opportunity. I think it is just creating a bad position for the province and for its people in that regard.

#### DRUMMOND HOME HARDWARE

**The Chair:** Our next presenter is Mr Ray Matthews from Drummond Home Hardware, Drummond Road, Niagara Falls. I spoke with Mr Matthews briefly. He has a little placard with some pictures on it. With the indulgence of the committee, I would like to allow him to circulate it.

**Mr Kormos:** You are darned right.

**Mr Matthews:** We all know we are here for one reason, concerning Sundays.

**The Chair:** I cannot think of anything that better exemplifies the common pause day than Mr Matthews with his grandchildren.

**Mr Matthews:** That is my car in the basement.

**Mr Poirier:** I just knew it.

**Mr Matthews:** They would not let me park it out in the front. I tried to bribe him, but I still could not get it out in the front.

**Mr Carr:** You tried to bribe him? You cannot do that.

**Mr Matthews:** They have been around for two years. Mrs Cunningham is not here now but she looked at that picture two years ago at another committee meeting we had.

**The Chair:** You have been with us for a good part of the day, Mr Matthews, so you are certainly aware of the procedure. You have approximately a quarter-hour. Please go ahead.

**Mr Matthews:** I realize it is late. It is 20 after three. It has been a long day and it looks like the committee probably needs a seventh-inning stretch.

I, Ray Matthews, and my wife are the proud owners of Drummond Home Hardware for the past 19 years in Niagara Falls. We employ five full-time, local, married employees. We hopefully will do \$1 million in sales this year. We are the little guys, but we are still the large majority.

I represent and speak for well over 80 Home Hardware dealers in Ontario. I represent over 700 of their employees along with over 7,000 signatures consisting of the general public in our region of Niagara, and this is all in your office.

We strenuously object to Sunday retail shopping and are 100% opposed to any further exemptions as of last March 1991.

This is approximately the 10th public meeting that I have spoken to and attended against Sunday retail shopping. Most of these were at our Niagara regional council. I find it ironic and kind of unfair that at each meeting I am told I have only 10 to 15 minutes to speak; 15 minutes to save all of my future Sundays. I do not know how it can be done when our regional government can take all the time it needs. Who could know more about retail shopping, the retail businessman or someone not in business? But I will certainly try my best.

Apparently I have been very naïve in the past for believing that Sunday in our society would always remain a sacred and family leisure day. I still believe it, because every report, every survey and every group I speak to believes that Sunday shopping should remain this way. We do have one group called Committee for Fair Shopping that would like Sunday shopping for their convenience, but I never seem to see them at any of these meetings. I have yet to talk to anyone who can show me that there is any gain in Sunday retail shopping, yet there are few who do say it is for our convenience. It is certainly not convenient to any of the store owners or their families and employees.

Sunday is a very valuable and special day to our group and to myself and to the large majority of small and large businesses. It is a day to break away, a day of your choice, not someone else's. Most, if not all of us, have friends and family, a wife, children and grandchildren. Can it be wrong to spend Sunday with them?

I would like to thank the NDP for its support in believing in a pause day and for Bill 115, which I will discuss later on. I would like to pass out to this committee just a few of the many letterheads that I have received in full support of keeping Sunday a pause day. Among them are the ones that you have in your report there from Bob Rae, our Premier; our present mayor, Mr Smeaton; the mayor of Toronto; Margaret Harrington, MPP; and the Canadian Retail Hardware Association. One of them is dated way back to October 1985 from Les Kingdon, who is the executive director of People for Sunday Association; I understand he is at the meeting tonight. I am a member of his organization, which comprises 70,000 members who are against Sunday retail shopping.

The views have not changed during all these years. Sunday retail shopping is not a must; Sunday retail shopping is not wanted nor is it needed. If you prefer not to listen to me here today, then at least listen to all the others, the large majority who simply say no to Sunday retail shopping. Once our Sundays are gone, they are gone for ever, and for ever is a long time.

You will also hear many excuses in your travels—and I am sure you have and you have travelled a lot and I understand this—across Ontario of why a minority thinks Sunday shopping is wanted. You will hear that it will stop USA border shopping and yet that the consumer will stay home and shop on Sunday. Well, our regional council exempted the border town of Fort Erie just two years back, which is right on the border of Buffalo.

I would like at this present time to pass out another picture. My wife and I took the opportunity to go to Fort Erie to see what a tourist-exempt town looked like. That was on July 28 of this year. You can go next Sunday or the

Sunday after and you will see the same thing. I would appreciate if everyone would take the time to look at these pictures of Fort Erie of this past July 28, 1991, which is when we took them. The pictures clearly speak for themselves.

We have just recently had nine months of wide-open Sunday retail shopping in Ontario, but all during this time, USA traffic at the border points still increased dramatically. Please read my personal article on the facts of the trial period of Sunday openings from June 1990 to March 1991. Price dictates USA shopping.

You will hear rumours that Sunday shopping will create employment, but employment did not increase during the nine months of Sunday openings. Wide-open Sunday shopping will do just the opposite. It will create more unemployment as many small businesses will just give up and close their doors if we must work seven days a week. A seven-day shopping week means slavery to almost all small retail businesses.

1530

You will hear the story that firemen, policemen, hospital nurses and all emergencies work on Sundays. Talking to them, they will tell you that yes they tolerate it, but certainly do not enjoy it. Is Sunday retail shopping an emergency? Further discussion will tell you that these employees who work Sundays and long days eventually get two to four days off after this long period of time. They get a reward. This system cannot work in the retail business. For us the retailer it is seven days a week, 52 weeks a year. Sound fair to you?

A minority of others will tell you that they have no time to shop throughout a six-day workweek. Stop and realize the majority of retail businesses are open from 8 am until 10 pm, six days a week; some even go 24 hours a day for six days. This can only be fiction.

At long last we have a bill, called Bill 115, for some protection. I would like to thank our NDP government again for this start, but Bill 115 needs many changes. It does not provide adequate attention or protection to the employee and little or no protection to us, the majority of retail businesses, the employer. Let me set you some perfect true examples. There are 821 municipalities in Ontario and many regional departments. The decision in Bill 115 to allow each region to decide tourist areas and exemptions has already started to rape our society of a common pause day.

Windsor council has just recently exempted all of Windsor. Our own local regional council has just exempted a piece of open land that was discussed a few minutes ago here. This is 22 acres of open land, an exemption that a fellow applied for. Yes, you heard me right: It is open land; there are no buildings on it. There is only a future possible date of somebody opening in 1993. It was put to the regional council, "No Sunday shopping, you get no mall," so our regional council exempted them.

This proposed mall not only has the right to open up on each and every Sunday but it also now has the right to open up on each and every statutory holiday. I believe this to be the bottom of the pit. Does this sound legal, fair or right?

In the past our regional councils have exempted all wineries to open on Sundays. They have exempted the

whole of the town of Port Dalhousie. They have exempted two miles of Lundy's Lane. This allowed one Mr Grocer to open, one Zellers, one shoe store, one electronic shop and, of all things, one local brewery to open on Sundays. Rape is the only word to be used here; they have not yet heard of the word "no."

Most other regional municipalities will follow this pattern unless we plug the many loopholes in Bill 115. They also just recently exempted Herbie's Drug Warehouse in St Catharines although it is well over the limit of 7,500 square feet for drugstores to open. The better and truer name for this drugstore is a full-scale supermarket when you see the size of it and the products it stocks. To me, this means that if I put souvenirs in my hardware store I should be able to get a Sunday exemption, or if I hire a pharmacist and sell prescription drugs, I should also get an exemption for Sundays.

You will be overrun with exemptions of all sorts should you not define, refine and rewrite Bill 115. The latest report: Vanity Fair outlet, which is approximately 12 miles out of Niagara Falls at highways 20 and 50, has also just applied to the region. Their reason? They say they are in the centre of the peninsula, they are on a well-travelled route and they are near camping and they are near fruit stands.

It cannot and will not end. The list of excuses, not reasons, remains endless. We, the large majority, need and want your protection. We must preserve our only day, Sunday, and keep it a pause and a family day. We have before us at the present time a hornet's nest, a snowball effect that can only get completely out of control, but we also have one very simple ultimatum at the present time. We must go back temporarily and stay with the status quo as of June 6, 1991. This simply means no more exemptions would be granted after this date. No employee could then be intimidated by refusing to work on Sunday and no committee would be needed to get the employee's job back if he got fired.

We, the majority of retailers, want to work with this committee and we also need your deep concern, your support and your help. No law will ever satisfy everyone, but in our great democratic society, decisions have always been made the fair way, the democratic way and by the majority. This committee was elected by the majority. I am sure we all feel this system is fair.

**Mr Matthews:** In closing, I must ask, would you enjoy working seven days a week, 364 days a year? I think Christmas Day is still protected. We say six days are enough. Consider us as human beings looking for strength and love to spend Sundays with our fellow men, women and children. We need protection and we need it today. Respectfully yours, Ray and Ann Matthews and all our staff.

**Mr Daigeler:** Thank you very much for coming before us. I understand you have made presentations before to this committee, not the same composition but the committee as such. I am not clear, though, as to what solution you are proposing. Are you also arguing that there should be no tourism exemptions at all?

**Mr Matthews:** I am using Niagara Falls here as a good example. We already have a tourist-exempt area which we have had for years. There may be a few who



disagree with it, but it has been that way for years. It is spreading out so that it is going to become, of course, just widespread.

**Mr Daigeler:** So who should that someone be who could make the decision as to what areas would be tourism-exempt under this bill?

**Mr Matthews:** Our city council did that years ago.

**Mr Daigeler:** You agree with that.

**Mr Matthews:** The Niagara Parks Commission was of course one that is totally exempt. I do not think anybody in Niagara Falls would exclude them. That is souvenir shops. They have a three-month time period to operate and make a profit in their business.

**Mr Daigeler:** So you agree that a municipal council should have the privilege or the right to decide which areas could be tourism-exempt. Do you agree with that?

**Mr Matthews:** To a point I think they have already done it and they have reached the limit in Niagara Falls. Just let me correct you there a little bit. I believe if you check—and I did not bring one here, but I can get one for you. I believe if you check the area that is tourist-exempt in Niagara Falls, it is more than adequate to cover any tourist who has ever happened to be in Niagara Falls, at the present time, anyway.

**Mr Daigeler:** I guess under this legislation they would have to make a new application, because right now we do not have any tourism exemption.

**Mr Carr:** Thank you for a fine presentation, and particularly for the pictures. If given the opportunity I would like to find out later a little bit more about that fish you got there. I know what I would like to be doing Sundays, too.

**Mr Matthews:** You will not be able to if we are all working Sundays. You will be working with us.

**Mr Carr:** I was interested in the one letter that was from the Premier. He says: "As you are already aware, our government's position on this issue is very clear. We support a common pause day for the Ontario workers and their families." You were here most of the day and you may not have heard, but not only your particular area but other large, significant portions of this province are doing the same thing they are doing in Niagara Falls. As late as last night Sarnia is now entirely open under a tourism exemption.

**Mr Matthews:** I am aware of that, yes.

**Mr Carr:** So notwithstanding that statement, the fact is in this province we are going to have Sunday shopping, and not just in some parts but a significant portion. I have listed some of them before that you probably heard.

As a result of that, I was interested in your comments where you said it was a good first step, but it seems to me it is not a good first step from your perspective if in fact the vast majority, including your own area, are open. I was just wondering why you see it as a good first step when in fact all we have done is open up the province, significant portions of the province, to Sunday shopping.

1540

**Mr Matthews:** Let me correct you: It is not the vast majority of Niagara Falls that is open; it actually is a minority

that is open, considering the size of Niagara Falls and the parks commission and one travelled route, Lundy's Lane.

**Mr Carr:** But when they open Windsor and when they are talking about opening entire cities and towns like Thunder Bay, Kenora, Collingwood and so on, we are talking about a significant portion of the retail operations in this province that are going to be open. That is why I am a little bit concerned that you would say it is a good law when in fact we have heard in town after town after town where there will be Sunday shopping that it is not a good law—

**Mr Matthews:** Where did you pick up that I said it would be a good law?

**Mr Carr:** In your presentation where you said you commended them for this bill as a first step. It is not a good first step.

**Mr Matthews:** It is a first step, okay? We did not have a bill before Bill 115, so this is what I am referring to as the first step. It is a step. I did not even say, I think, if you read my letter, that it was in the right direction.

**Mr Carr:** Okay.

**Mr Kormos:** First, let me say hello on behalf of Marg Harrington. She apologizes for not being here today. She knew that Niagara Falls people were coming up and she did ask me to say hello to you.

Second, I want to tell these folks you people have been a little bit modest, overly modest. I have been in your store. I have to confess I do most of my hardware shopping down at George's Hardware down on the south end of King Street. You knew Pat and Vince Evans. Vince is dead now, but Pat Noonan runs that same Home Hardware and he has been running the Home Hardware the same way Pat and Vince Evans ran it and the same way George ran it before him and the same way you have run your store for the last two decades.

You know your clientele; you know your product. You sell good product at the best possible prices, and you service your customers. You do not have to be open Sundays to compete. You are entrepreneurs in the finest sense. You work hard enough as it is six days a week and, by God, when you look at those photos, nothing could more eloquently state why it is that we in this province have an obligation as a government to create and ensure a common pause day. That is a day for family, for restoring and addressing our spiritual needs and our family needs and our social needs. All I say to you is thank you, because you have done a far better job than any politician ever could by saying what you have, not only here today, but by saying what you have over the past years and by being the kind of business people you are. I do not have to wish you good luck because your hard work and your talents will make you successful.

**Mr Matthews:** Thank you very much. I might also add that even though we are half a mile from the border and border crossing is a big problem, with the service you just mentioned that we give, at the present time it is not a problem to us because of the many reasons we are fighting for.

**Mr Kormos:** Darned right.

**Mr Matthews:** One of them is not to work Sunday to try to compete with them. I can compete with them on six days a week.

**Mr Kormos:** Thank you, folks.

**The Chair:** Thank you, Mr Kormos. Thank you, Mr and Mrs Matthews. It was a very interesting presentation and it is certainly one which has enlivened us.

**Mrs Cunningham:** And consistent.

#### COUNCIL OF CHRISTIAN REFORMED CHURCHES IN CANADA

**The Chair:** We now have a presentation from the Council of Christian Reformed Churches in Canada, Rev Arie Van Eek. Rev Van Eek, you have approximately half an hour. Please use that time as you wish, typically divided between your presentation and some questions from the committee.

**Mr Van Eek:** Thank you, Mr Chairman. We should be able to do it in less. After hearing the last several presentations, I feel like saying clergyman-style, "Hallelujah," but maybe your Hebrew is rusty. I feel it is a little dull about now and I will not be enlivening the situation a great deal, because the meaning implied in the word is about where I am.

From retailers and from employees and from religious folk, we all get the same sort of emphasis, and it should seem to me that your task has been made relatively easy. If I may be permitted a partisan remark, we have been in front of three successive government panels; now we have an all-party panel and somehow I like to think that something of what has been said so often will be carried forward to our government. As the Honourable Bob Rae said: "I've got four or five years, at most, to do something good. I'm intent on doing it." We are here to help him do it.

Just by way of background, so you know where we come from, because partisan we are also in other than political ways, the council by which I am employed represents a constituency of some 50,000 people gathered in 12,000 family units and assembled in about 120 congregations throughout our beautiful province. Its membership includes a high proportion of persons earning their livelihood in retail businesses as proprietors or as employees.

What has bound our people together includes such values as these: the high value that we place on family, friendship and community; the deeply held conviction that recreation, culture and religion are essential elements of a healthy society; the basic belief that the Creator of the universe provided for the development of all these life-sustaining means when he established as a norm for all human activity, including the economic, the perpetual rhythm of six days for work alternating with one day for rest, left undefined for the moment.

What holds us together too is the experience-honed perception that no progress in any field of human endeavour has made less compelling the continuing need for regular spiritual and social renewal. The tradition of limiting work on holidays and Sundays to the maintenance of essential services and works of compassion still characterizes the way we go about it. Living strictly up to its practice of avoiding unnecessary work on Sundays and

holidays is a criterion applied too in the discipline applied to the membership in the churches.

Our members have found ample ways and means to prosper economically. We note with thankful hearts that our Creator and Provider has attached to His command to observe Sabbath, rest day, the promise that He will bless those who keep the day as separate and distinct.

Jewish and Muslim believers observe the same rhythm in our country and indeed throughout the world. In the tradition of this creation order, European societies—prosperous ones, I may say—limit retail and other commercial activities to six, and in at least one country I know well, the country of my birth, to five and a half days. Conversely, in the United States, and one might add British Columbia and Alberta, with wide-open shopping the same overall volume of retail business is spread over seven days and several nights with a resultant major shift away from shopping on Mondays and Tuesdays. Another harmful consequence to this shift in pattern is that more people are working part-time and receive less social insurance and other social benefits.

Against this background in beliefs and experiences, we address the specifics of Bill 115. Let's put it up front that we thank you, the committee, and the regional members of the provincial Parliament attending these sessions here and there, for this opportunity to present our responses to the bill. We hope that you will still be able to absorb another intervention after having heard scores of them in the course of this month. I counted 180 before coming. I hope you have lost count.

We want to say to you that the Ontario government is to be commended for enunciating an effort for upholding the principle that holidays should be maintained as common pause days. But this exhortation—the word "should" was slipped in there—cannot be enforced, as no appeal or enforcement mechanism is provided for in the bill. In practical terms then, the good words, not unlike many sermons, become meaningless.

Furthermore, a definition would have to be furnished for all the province to know the meaning of a common pause day. The government would need to promote this stated intent in advertising the personal benefits obtained from using the day for the purposes laid out in its provision.

To the municipal option: The bill provides for province-wide application of the same criteria to all municipalities, so it appears to be an improvement on the old municipal option so widely abused. However, this limited municipal option allowed under subsections 4(1) through 4(11) deserves some comment.

#### 1550

First of all, the criteria are too vague to be interpreted in a uniform way by the adjoining municipalities—disparity. Adjoining municipalities may permit the opening of different competing businesses upon provincial licence granted on the basis of any two criteria other than those applied in a neighbouring municipality. Criteria 1 and 3 may be used to open a competing business in one municipality, where in another municipality that competing business cannot be open. And so these businesses in adjoining



towns will experience that competitive edge that earlier caused the flouting of the laws in our province.

The criteria do rest on the erroneous assumption that even on a level intermunicipal playing field more business can be generated by opening retail establishments for more hours. That assumption is erroneous. It has not been proven, and several interventions I have heard or have obtained copies of in the retail business are in fact negating this assumption on the basis of experience in a time when they opened their food stores in violation of the law.

The tourist exemption criteria are, furthermore, not contained in the law but only in regulations that may be altered at the whim of the government in power. This is a further cause for erosion of common standards, for common standards take a great number of years to become known, established, accepted and fairly enforced. The criteria first describe all too vaguely the characteristics of a tourist area and, I must say, subject to the interpretation each of Ontario's municipalities may give. We have before us a beautiful picture, in the criteria, of one beautiful patchwork of attractions. I like Ontario even better after reading these criteria. But let the Minister of Tourism and Recreation tell every potential traveller just how beautiful Ontario is. It is theirs to discover, I recall reading.

When we apply these exemptions, we erroneously assume that opening retail businesses other than those that service automobiles and provide essential health needs attracts and generates business. That emphasis has in one fell swoop shifted 180 degrees, from wanting to serve tourists to wanting to entice tourists. The Minister of Tourism and Recreation has not said it once but again and again, and he said it to me last week yet, that the law is meant to provide opportunities for municipalities or areas that do not particularly draw tourists to go all out and draw them and do that by means of opening up retail businesses serving the population generally.

In paragraph 3(1)4, there is an attempt to obtain wider approbation or support for a businessman's application for an exemption. That effort is seriously flawed. You remember it talks about a chamber of commerce or like organization backing up or supporting an application. Especially in smaller towns, you all know the very applicants may well be the members of the chamber of commerce or like organization and are therefore in conflict of interest when they deal with an application, or cannot be said to be fair judges when an employer or competing businessmen apply for such an exemption. Retail businesses marketing a whole range of consumer goods will attract business away from other stores if some are allowed to open and others are not, and the proverbial playing field gets very bumpy from here on in.

Once more about the criteria: By extending these shopping hours, the very people needing protection from exploitation are the ones most likely to have to supplement low income by taking time from the recreation that binds family, and these in turn especially will be single parents. Our society and government can ill afford the financial cost of the breakdown of the very basic unit on which society is built, the family. For that matter, and even worse, our government may not knowingly contribute to those stresses that contribute to family breakdown.

**The Employment Standards Act:** It has the appearance of justice within the words that they cannot regulate the most frequent violation in the workplace: peer pressure against those who prefer not to work. To refuse to work on a day that others prefer not to work is a very demeaning thing and will break that esprit de corps, that collegiality that is necessary for people to bear up under dull work for a long day, day upon day. Then there is also that chance that the boss will quietly pass over for a promotion an otherwise deserving employee because he is not very co-operative about working on Sunday.

**Drugstores:** The most frequent violators in this decade have been supermarkets, so-called, operating under the guise of drugstores. Again, the fair competition or level playing field was eroded, and submissions like the one of Loblaw's, for example, make clear reference to that, in the face of its own experience of having attempted to recover what it lost to unfair competition. The act should be amended with a clear definition of drugstore, sales clubs and the like.

In line with the expressed intent to serve the needs of tourists, the law should also limit the size of stores to such space as is required to serve tourists, and we are submitting fairly arbitrarily that 2,400 square feet may well cover that. Companion deterrent fines also should be legislated and enforced and these fines should, I submit, be not less than the gross receipts of the day on which the store was open in violation of the law for each violation.

The maintenance and enhancement of family values belongs to the task of that broader jurisdiction, that larger community which makes up the families. It is the whole province and its government that is involved here, and so we petition the government of Ontario to contribute significantly to the strengthening of an orderly society and dynamic communities by withdrawing the proposed tourist exemptions, enacting uniform closing laws and providing clear definitions as outlined earlier, in order that, to quote from the Christian scriptures, "It may go well with us in the land which the Lord our God has given to us." Thank you for your attention and for the opportunity to make our voice heard.

**Mr Daigeler:** On the first page of your brief you make reference to what you think would be a universal phenomenon, the need and also the fact of some form of common day of rest in most cultures and religions. I guess that would be your assumption. Quite frankly, it was mine as well until I asked that question of a Chinese Canadian businessman in Toronto. He said that from his knowledge and experience, even though he has lived in mainland China and then Hong Kong, there is no such tradition. I was surprised at that. He said that inasmuch as that tradition is there, it is the influence of the Christian west. I am just wondering whether you have any knowledge about the spiritual traditions or cultural traditions in the Far East that could give us a better reading of that situation. In fact, I want to look it up myself.

1600

**Mr Van Eek:** Mr Daigeler, you are aware that it is Chinese, not predominantly Jewish, Muslim or Christian.

He does the Christians quite an honour in suggesting that the small minority that has been Christian in China has persuaded others who did not experience or practise any such rhythm in life to begin to do that, so that today in China it is widely observed. Although there is a very long and strong Christian tradition in the Soviet Union, with the coming of the revolution before the very last one it sought to do away with it and was very unsuccessful. The point being made is that these three major religions have got on to something, by ways that I try to identify, that is good for human beings.

At this point in our history, with the erosion of the common pause day it is the task of government to make a judgement on its own, not simply giving in to the pressure of business, certainly not to the greed motive that drives a lot of business, especially foreign capital brought into our country, to say what is good, what makes a healthy community and society in Ontario as well as in other places. I have witness from friends in BC who have lived both under the common pause day sort of provision and latterly under the open Sunday, and they can tell you the difference.

From personal experience, if I may be permitted—a father of five children, four married, grandchildren—the only day I can be sure that I might get together with those who are closest to me is that one day that until now has been protected from unnecessary work for all of us. It is becoming more and more difficult in this complex society of shift work and university, all kinds of different occupations, to find one another at the same place at the same time. And the Christian scriptures and human experience teach us that it is good and wholesome to reserve a time, the same, for as many people as possible to engage in wholesome things. We are not so naïve as to say that you must protect Christians for an opportunity to go to church. We are talking about a whole lot more of which we know that it is recreative, it is wholesome, it is good for community-building and strengthens family and other relationships.

**Mrs Cunningham:** I am not going to ask you the question of whether you think this bill supports a common day of pause, because I think that would be an insult to your presentation today, but it is normally our first question. On page 8, your concerns with regard to promoting tourism, I am curious—

**Mr Van Eek:** Sorry? With respect, I have four pages.

**Mrs Cunningham:** I was reading the former one. I think I will ask you the same question anyway. In looking at it, I think it is one you would probably be just as concerned about and I am interested in your view on it: the promoting of tourism with regard to tourist exemptions. My view is that this will be something the government will have to deal with. I know in the context of your presentation today that you probably would not want to see exemptions, but in the realistic world we live in there will be areas of the province that will be open for tourist activities.

Given what you have heard today, this afternoon, I am wondering whether you have anything you want to offer to the committee with regard to what we as a government can take around those tourist exemptions. I think that is a reality because it has been going on now for about 40 years.

**Mr Van Eek:** Who are we to argue that there are natural attractions that are beautiful, historical events, blah, blah, blah; that is what I tried to say. The exemptions identify tourist attractions, but the big jump is from tourist attraction to the assumption that retail business, retail opportunities, more widely offered in all kinds of things will induce tourism.

I live very near Burlington and work in Burlington. We have a little heritage village, so-called, and they tried very hard to open that thing up. Well, it has not been allowed. But the result in other places where it was allowed—like in Waterdown where we have all the antique shops and where I live—is that there is an awful lot of voyeurism, if I may, window-shopping and the like, but no appreciable amount of business, not even in those artefacts.

Now we are talking about something about which I would arguably agree is the kind of thing you look for on Sunday or any day in exotic places and so on. But that is the exception that proves the rule. We do not need another grocery store, we do not need another hardware store, we do not need another store of any variety in order to attract tourists—except those that provide emergency drug service, which most hospitals do in any event.

There is a fly in the ointment of the argument that says, "Open more stores and you will get more people coming to your town." It is just not proven. Those who have been in violation of the law can say to you, as they have: "We've been there. We have tried to open up. We tried to get an advantage. But as soon as that level playing field was open, we found no appreciable difference between how they meet the needs of the ordinary citizen and the so-called tourist."

I do want to say something about the summer resident areas. The word "tourist" too easily has been taken to include those who live for a couple of months up north or even steadily go up north week upon week. So a furniture business in Toronto is in competition with another furniture business up in the Muskokas because residents in Toronto now go to Muskoka to do some of their furniture shopping. That makes no sense to me. I find it eminently unfair. It is the wedge through which legitimate business eventually crawls in order to regain that level playing field.

**Mrs Cunningham:** Thank you for expanding on that.

**Mr Fletcher:** I am looking at your presentation. It is a very good presentation. The comment you made—and I have heard it today and I have heard it in other centres—it that it is a good first step; not, as was being said before to the previous witness, that it is bad, bad, bad, but it is a good first step. You have also outlined many things that have to be done. I really want to get to what you said about using retail as an enticement to tourism. There are areas—and this is not a flip-flop or anything else—where retail shopping is an enticement to tourists in Ontario, are there not?

**Mr Van Eek:** I would like to know what you would want to open up that is not now possible under the narrower interpretation of the Retail Business Holidays Act: Food service, obviously; prepared food, obviously; the drugstore properly defined, the gas station, souvenir-type things and so on. Yes, yes. But these stores would have to



really engage in that kind of business and no other. The wedge has been that, under the guise of one establishment defined generally in law, other things have also come in. When I can get a whole grocery basket full of groceries from the so-called drugstore, I say, in deference to my local grocer, "You do have cause for complaint, and I have a hard time telling you to shut the place up."

**Mr Fletcher:** The reason I asked that question was because I wanted to get to the primary question. That is, do you think we should have a committee of stakeholders—retail people, union people, local government—sit down together and determine exactly what the criteria should be as far as tourism is concerned, so it is a uniform piece of regulation—I will not say legislation—throughout the province?

1610

**Mr Van Eek:** You are giving me, hypothetically, a poor second option. The first option is no tourist exemptions à la this. Let's sell the people on the beauty of the province. I have my rural preferences and you want to go up in the tower—that's fine. But do not have all this ancillary retail business, because it is not truly serving any member of the public, including the tourist. We know what tourist trade—

**Mr Fletcher:** Now, as you say, I am giving you the second option.

**Mr Van Eek:** But now that poor second option: We should then minimally indeed have a province-wide stakeholders' committee that can see to it, because what the present suggested legislation says is that the local municipality's ruling is final. That is precisely where every domino, you know—

**Mr Fletcher:** This stakeholder committee does not come out and say, "Shut it all down."

**Mr Van Eek:** It would be hard to enforce. Conflict of interest for many of them, too.

**The Vice-Chair:** Thank you very much for that fine presentation.

#### DOWNTOWN HAMILTON BUSINESS IMPROVEMENT AREA

**The Vice-Chair:** Next up is the downtown Hamilton business improvement area. I want to welcome you to the standing committee on administration of justice. You have 30 minutes. You can divide that time up any way you want, but I am sure the fine people up here would probably like to ask you a few questions. You can begin when you are ready.

**Mr Mongeon:** My name is Marcel Mongeon. I am the president of the Royal Connaught Hotel, another hotel located here in downtown Hamilton, and also the chairman of the economic development committee of the Hamilton downtown business improvement area. Our Hamilton city-centre BIA, as we like to style it, consists of more than 250 members immediately to the east of where you are sitting. We operate businesses essentially surrounding Gore Park and to the boundaries of what is also known as the International Village BIA.

There is certainly a high level of interest among our memberships in the legislation you are now discussing. A large part of this interest is no doubt a direct result of the fact that there are a large proportion of owner-operated businesses which are members of our BIA. To those people, because of the owner-operated nature of their businesses, Sunday shopping at times suggests that to different extents they are going to be working longer hours.

Although there are a large number of issues you are dealing with which are all tied up into the subject of Sunday shopping, I would like to deal in depth with only two separate issues. The first of these is the whole issue of local option. The second is the entire crux of the matter from a business point of view, and that is, will Sunday shopping increase total revenues in the province of Ontario?

Dealing first with the local option issue, the legislation, as I understand it, proposes to let individual municipalities decide whether there are sufficient tourism-related activities in their area to constitute a tourism zone, which would then permit them to allow shopping. Certainly I have no problems, and I know the province has traditionally never had problems, in allowing different parts of the province to be treated differently by provincial legislation.

Although there is generally an understanding that the province, or the Legislature of the province, will try and legislate for the province equally across the board, there have been different treatments accorded to different parts of the province. One example is the concentration tax which applies in Metropolitan Toronto. Another is singling out the northern part of the province for special development incentives, that sort of thing.

However, when we examine the history of legislation in Ontario, very few pieces of legislation have in fact considered allowing municipalities to have a local option. Two different historical issues do come to my mind, because I have had personal experience with both of them. One is the exemption with respect to liquor laws, allowing taverns to be licensed in particular municipalities, which is no longer a part of our liquor licensing. The second one was an obscure one under the Theatres Act and the Sunday observance legislation, which dealt with movie theatres opening or not on Sundays.

Part of the reason, I believe, that there have been so few pieces of legislation which have dealt with local option is because it creates battles between municipalities. My personal involvement with theatre legislation came with a drive-in theatre located just outside of the city of Chatham. It was actually located in the township of Harwich, a small rural community which, until I believe the late 1960s or early 1970s, did not allow theatres to be open on Sundays. Accordingly, the drive-in theatre I was involved with was put at a disadvantage to all of the theatres located in downtown Chatham, a much more open-minded, open-thinking municipality which allowed movies to be shown on Sunday. Of course, the drive-in theatre would go to extraordinary lengths to get around the problem such as not starting the movie on a holiday Sunday until 12:01 am. The whole thing was certainly a sham, but these are the same sort of things that you are having to deal with in terms of super drugstores and that type of thing.

When we deal with local initiatives, we also start pitting municipality against bordering municipality. The best example I have locally to show how that occurs was when the city of Burlington—I believe it was three and a half or four years ago—repealed its store-closing hours bylaw, which had the effect of allowing stores to stay open until 9 pm. After just three short months with everybody rushing to Burlington, Hamilton also had to make similar changes to its bylaws to allow store openings until 9 pm.

Now that we have stores opening Monday through Friday until 9 pm in both Burlington and Hamilton, it is easy. The shops in both Burlington and Hamilton are equally empty. There was, of course, the initial flurry in Burlington when the novelty attracted people from both Burlington and Hamilton. But if you go into any mall after 6 pm which has store hours open until 9 pm, you will realize there is no business there. Particularly now in the summer months, particularly in these difficult economic times.

The legislation before you is establishing a tourism area as being subject of an exemption to allow store hours. Certainly the encouragement of tourism areas in our province is a laudable goal. I say that working in the industry, being the president of a hotel. The taxation policies of the federal government have given us a lot of catch-up to play in this province and this country, trying to encourage tourism in any which way we can. I am not by any means disputing that it is a reasonable goal of the Legislature to be dealing with tourism areas and encouraging the development of them.

However, why does it have to be the municipality that decides where the tourist areas in Ontario should be? Why can the Legislature of the province not make the same tough decisions that the Legislature has to make time and time again when it decides that northern development is a laudable goal and supports extra subsidies in northern parts of this province to encourage development there? Certainly the Legislature is prepared to make those tough decisions. Why can the Legislature in fact not make the decisions in this piece of legislation? You go out, you make your own rules, and you decide which parts of the province are in fact suitably entitled to be called tourist areas.

Now, I may be called a heretic here in Hamilton, but let's face it, Hamilton is not by any means a tourist area. We certainly have tourism attractions. We certainly do have businesses, such as hotels and restaurants and other members of the hospitality industry, which derive parts of their revenue from tourism. But I really cannot see how our downtown BIA is a tourist area. I am not going to give you the whole spiel about how beautiful it is and how much we have to offer. The fact is, we are not a tourist area, and I am sure the Legislature would probably agree with me on that point.

However, if you leave the municipal option here, then certainly, once Welland, once St Catharines, once Caledonia have declared themselves tourist areas, the municipal government of the city of Hamilton will really have no other choice but to try and even up the playing field itself by making the necessary arrangements and contorting the regulations sufficiently to draw themselves into whatever definition you establish in the regulations as a tourist area.

But I really think it is up to the Legislature to make that decision of who will be entitled to the tourist exemption and who will not. That is the best way I know in absolutely encouraging the development of tourism where it needs to be encouraged in this province.

1620

Now I move to the second issue: Will allowing Sunday shopping actually increase revenues? In this area of the province, many people point to the seemingly recent advent of cross-border shopping as in part being caused by the fact that we do not open on Sundays here while they do in New York. This to me is an absolute red herring. I suggest the reasons for cross-border shopping are in fact far more fundamental and in a lot of areas more within federal government control rather than provincial government control; to cite three examples, the extremely high exchange rate that we have to deal with, the free trade agreement and the lessening of duties year after year, and the incredible retail tax load that goods now have to bear here. I suggest to you that those are the real issues in cross-border shopping and that Sunday closing has in fact very little to do with people going across the border to shop.

They go across the border to shop because it is cheaper, because of the taxes and duties we are no longer imposing, because of the high exchange rate, which helps support that. As a perfect example of that, if you go back five years when the exchange rate was 75% and we did not have a GST, whoever heard of cross-border shopping? It was not economically feasible. Sure, once in a while somebody would be across for a dinner or something like that and they would pick up an extra case of beer, but you were not getting the thousands and tens of thousands of people lining up at Lewiston and the Peace Bridge.

The real issue is, will Sunday shopping increase the revenues? My answer to that is, in a tourist area, maybe. In a lot of tourist areas the tourists from outside the area are there only for the day. A perfect example is a day-tripper who, say, is on a bus tour and the bus tour happens to stop in Kingston. If you do not catch him on that one day he was there and that day happened to be a Sunday, nothing happens.

The reason I say maybe is I look at the European tradition, I look at traditions around the world. You go to Paris, London, Bangkok and Thailand, try and get something on Sunday—they are all closed. Nobody is buying anything there and people do not expect to buy anything there. When you go travelling through Europe they even give you a double whammy. Not only are they all closed on Sunday but they also have something called an early closing day in a lot of municipalities. The whole city just closes down at 12 o'clock on a particular day and you have to play—

**Mr O'Connor:** In the middle of the day?

**Mr Mongeon:** Yes, exactly. You have to play roulette as to which one it is. If you use particular tourist guides, they try and establish which day it is so you can plan your itinerary around it. But it is interesting to note that there is a great portion of what our culture and our habits are derived from, and they do not find the need to open on Sundays to encourage their tourists.



I realize that Paris, France, is probably a little more of a tourist attraction than Hamilton, Ontario, but the basic principle is there. Let's take Niagara Falls, for example. Does somebody truly go as a tourist to Niagara Falls to buy computers? Do they go there to buy automobiles? Do they go there to buy fax machines? Do they go there to buy household utensils? Of course not. They buy what I call tourist garbage—you know, the little mug or ashtray or something that has "Niagara Falls" written on it.

**Mr Lessard:** From Taiwan.

**Mr Mongeon:** Exactly. I am not even going to get into that one. You are absolutely right, but the fact is that those stores have traditionally been allowed to be open anyway. They are either part of a hotel or a restaurant that caters to the tourist trade. That is what tourists want to buy, little knick-knacks like that. This legislation would not affect the tourist stuff we are trying to sell. Do we really believe the tourists are looking to buy the items I have enumerated? That is what this legislation would have you believe, that by declaring a place a tourist area, tourists are interested in buying automobiles and that sort of thing. They may be interested in buying fashion garments and things like that, which might otherwise have to close, but as a whole percentage of what you are talking about, I would suggest it is not significant for you to pass such dramatic legislation as you are being asked to do.

When it comes to Sunday shopping increasing revenues in other than a tourist area, I sincerely doubt it is going to increase revenues at all. Each one of us in this room has either made up a budget, or the budget is imposed on us by our paycheque and general savings and whatever we can convince the credit cards to let us go over on. We have only so much money to spend in either six days a week or seven days a week. Saying we are going to be open on that seventh day does not increase the amount of money in our economy.

There are some who argue we are going to be developing some employment opportunities, and they always direct this to the students, that we are going to develop lots of student employment opportunities. The reason we are always talking about students for these employment opportunities is that students work for the minimum wage. Let us not delude ourselves with the type of employment opportunities Sunday shopping would create. They would, in fact, be minimum wage; they would be, as much as the retailers can help it, student minimum wage, and that has traditionally been somewhat lower than the regular minimum wage because they do not want to pay the money to stay open that amount of time.

We also have to look at what extra costs we are talking about, staying open that seventh day. When I was walking over here I took a look at a bus and I said, "Gee, if we were open on Sundays we would have to put on a lot more buses in this city." What are the environmental costs of running a whole city's bus service an extra day? What are the environmental costs of turning on all the lights, of air-conditioning the place for that extra day, of heating the place for that extra day?

On one hand, the Legislature is encouraging us through Ontario Hydro for the conservation of energy. When you get right down to it, one of Ontario Hydro's programs could easily be related to, "We should go to shorter store hours and plan our day more properly so we use less energy out there." But now we are saying, "Let's stay open."

To conclude, I have addressed two issues: the local option issue, which I put to you should not be left to the local municipalities to decide. It is you, the Legislature of Ontario, who should make the decision as to where stores are allowed to open and where they are not. If you decide, I suggest it is a reasonable goal to encourage tourism with respect to the issue of whether Sunday shopping will increase revenues. As I indicated, in the tourist areas, maybe; anywhere else, absolutely not. Thank you. I am available for questions.

**Mr Daigeler:** Thank you for your presentation, although I must say you have totally confused me. Until now I had put down the tourism and hotel/motel operators as strongly in favour of Sunday openings. At least up to now, all those related to this business had been very forcefully arguing for that. You are coming now and arguing the opposite and, quite frankly, quite eloquently and with good arguments, taking the opposite position. So I am really very confused as to the message I am getting from the tourist hotel/motel operators.

Also, I am struck by the reaction I am getting particularly in Hamilton, not just from you, but others as well, who are saying, "Let the province decide for us which is a tourism area and which is not." I come from Nepean, the Ottawa area, and, quite frankly, to say that for us Toronto should decide what would be a tourism area in the Ottawa area or in eastern Ontario is like raising a red flag, and I think you would almost get a revolt there.

I am very curious as to why Hamiltonians are so willing to let the province decide on that. Perhaps they do not have that almost gut antipathy towards what is perceived as Toronto, so I am struck by that. I am also struck by the difference between your presentation and the presentation from the Hamilton and District Chamber of Commerce this morning. I had asked the presenter whether her presentation was the one that has been the traditional one and she assured me, yes, and really it was the opposite from what you are saying. You will understand, therefore, that I am really quite confused and I had expected you to argue in favour of it rather than the opposite.

1630

**Mr Mongeon:** As to your first area of confusion, why somebody who operates a hotel is coming out here speaking against Sunday shopping, my family is fortunate enough to be involved in a number of different enterprises. We have a manufacturing facility down in Welland that manufactures apparel. We see the people in our plant running across the border to buy their groceries, and try to explain to them how this is seriously affecting their jobs directly in Welland. We have a retail shop located in Burlington, and the reason I am so familiar with the Burlington regulations is that I went to their city council and argued against it.

Even though I am the president of the Royal Connaught Hotel—and when somebody asks how to get to be president, I say, “It is simple; you get your mother to buy the place.” Even though I hold the lofty title of president, sometimes my wife gets worried about who I married, her or the hotel, because I am an owner-operator. I am not a high, lofty, corporate executive. If our hotel does not do well, I do not get paid.

When it comes to the encouragement of tourism in Hamilton and why, perhaps, people are so ready to have Toronto decide for us, it is because we do know what has happened up to now when it has been local option. We do not want to do it here, but if Burlington wants to do it we will end up having to do it. We take some solace in the fact that if we leave it up to the people in Toronto—I can certainly appreciate that being from Ottawa and Nepean you would not be too interested in letting Toronto do it for you—but being so close yet so far from Toronto, we are ready to accept the fact that Toronto will make the level-headed decisions on where stores should be allowed to open to encourage tourism and where it is just an entire sham.

Let's face it, if downtown Caledonia wants to declare itself a tourism area and somehow works it through the regulations, is it really a tourism area? Are they really getting lots of tourists just because it is beautiful downtown Caledonia? That is, perhaps, a suggestion.

Finally, as to the issue of why my views are so divergent from the chamber of commerce, it is funny, because Kathy Drewitt of the chamber and I worked very closely on some other issues related to my business, and she and I are usually speaking on the same side of things at meetings very similar to this. The chamber of commerce's base issue is that there should be as little legislation as possible in all things.

Generally I tend to support that argument. If in fact you are ready to repeal the act here altogether, I could probably live with that and everything that falls out from that. If you are starting to repeal legislation, I have a list of about another 200 acts and regulations you might want to consider at the same time.

**Mr Poirier:** We will give you an extra five minutes.

**Mrs Cunningham:** I thought you were extremely eloquent and very straightforward and I appreciate it very much. I thought you simplified the whole thing for us and I share your views.

I am interested in the strong sense you presented us with that perhaps part of the criteria the province should choose—and I am saying “province,” and I agree with you there—are words such as “tourism attractions” as opposed to “tourism areas.” I think that is a very straightforward suggestion, and I am wondering if you want to expand on it just a little bit so I can understand what you really mean. It may solve the problem of a whole municipality declaring itself a tourism area.

**Mr Mongeon:** The Ministry of Transportation of Ontario already does it. They declare what is a tourism attraction suitable for separate signing on one of the major highways. For example, when you were driving into Hamilton from Toronto you saw a big sign there for the African Lion

Safari. If you go down the peninsula, you would see something there for Prudhomme's Wet and Wild.

As much as we would like, when you do not see a big sign that says, “The Royal Connaught Hotel This Way,” the reason is that the Ministry of Transportation has established certain criteria. As I understand it, they actually send people out into parking lots to pick off licence plate numbers at these attractions to establish that they are receiving X hundred thousand people of whom X per cent are from outside the province and something that is certainly worthy of designation. I would suggest to you, regulation very similar to that could be used to establish what is a tourist attraction for the purposes of the Sunday closing legislation.

**Mrs Cunningham:** The other point I would like to underline and perhaps have you speak to is this idea of total revenue increases. There will be those of my colleagues who will say they have been influenced by persons coming before the committee who had assured us that revenues have indeed increased over the short period of time the stores were allowed to be open on Sunday. I, for one, in looking at them have not at all been influenced by that, having sat on this committee in the past when we have seen the short-term revenue increases. I have not been convinced that this is a long-term thing and I do not know whether that is what you were saying or whether you have looked at data that would prove that. You say, maybe for tourist areas and not so for other parts of a municipality. But I would like you to talk a little bit more about what you may have seen that would have influenced you with regard to lack of revenue increases.

**Mr Mongeon:** The perfect example of that is in fact our retail outlet in Burlington. My mother owns a ladies fashion store in Burlington. Burlington changed its legislation to allow stores to open until midnight. We took a look at it, looked at the business district we were in, which is right downtown on the water in Burlington, and decided, no, not worth it; we are going to be open, maybe, Thursdays until 9 o'clock. We tried it for a couple of weeks. Guess what? Our sales did not drop by 2% at all. They did not drop at all. In fact, all we had to do was put at the bottom, “We'll be open any time you want to make an appointment with us.”

In fact, through the hotel we also advertise we will be open if you want to make an appointment with us. In the last two years that policy has been in force there have been absolutely no requests to open the store after hours. Being open longer does not mean you are going to do any more in sales.

Another thing that you have to distinguish clearly is, just because people are looking for something to do on Sunday and happen to go down to a shopping mall in Niagara Falls, New York, to have something to do, which is among the evidence that you have been presented up to now—sure, a lot of people go into Jackson Square, Lime Ridge Mall for something to do. They walk around and everything. There are a lot of people in the mall, but do you see anybody carrying any bags that they have actually done something with.



My problem is, I do not have time to go shopping; I go buying. I know exactly what I want when I go into the place. I go there. I say: "Fine, what've you got? What are your prices?" I check the price somewhere else, put down my money or cash. I am in and out in 20 minutes. I do not go shopping. I do not have the time for it. All we are trying to do with this is open our amusement parks an extra day.

**Mrs Cunningham:** The reason you are here is because you probably sense, as some of the rest of us do, I think, a serious change in the lifestyles of the next generation of young people coming along based on what they do in their leisure time with or without their families. And I certainly probably am somewhat, for want of better words, old-fashioned in the way I like to think that we can spend our leisure time.

But I, too, have been to Europe and have found lots to do on Sundays where everything is closed, and it has probably been the biggest influence I have had in taking the strong stand I take—by the way, probably not always in line with my party. And there are other members here who are not in line with their government. But I think that has been the great strength of this committee, and I thank you for appearing before us.

1640

**Mr Lessard:** Thank you very much for your excellent presentation. You have really tried to take a couple of complicated issues in this group of complicated issues and simplify them for us, and I appreciate that. I just want to comment on your approach to shopping. I really like that as well. I have a similar approach. Something I would like to see retained is the quality of retailers in Ontario so that when I go someplace I can depend on somebody's advice when I want to buy something. They can say, "Here it is; take it home with you," rather than having people who may not be very qualified and causing a lot of work to do shopping, because I do not find a lot of time either.

You are the first person who has mentioned environmental factors as well, and I appreciate that. You asked, what do tourists look for when they go to Niagara Falls? Yesterday somebody told us they go there looking for Oneida silverware, so that is one of the arguments that we have been given on Sundays. I do not know whether that is a fact or not. I guess the most important thing you mentioned, for me, was the part about the tough decisions and the municipal option and who should make those decisions. And I do not think that, as a provincial government, we are really reluctant to make those tough decisions, but I guess something we are concerned about is the sheer proportion of the exercise.

We heard that there are about 800 municipalities in Ontario; that does not include unorganized territories. So we would be talking about a pretty immense undertaking. And we have been told as well, in my community in Windsor, that they do not want any provincial intervention. They think they are the best people to determine what should be done in their own municipality. So I guess I am asking you for some advice as to how you think we might be able to undertake that task if we, as a provincial government, decide we do want to do it that way.

**Mr Mongeon:** People in Windsor, Ottawa, Nepean, Kingston, Toronto and Niagara Falls have a pretty easy job in front of your committee as they will be designated tourist areas. They have to be. They are, it would seem to me certainly, crossing points into the United States. They will most likely fit whatever criteria you establish for a tourism area because they attract a large concentration of foreigners into the country. So it is easy for them to say, "We don't want anybody to decide this for us," because they already know that no matter what they do, they are going to win. The problem I have is not with the Windsors, not with the Kingstons, not even with Toronto or Niagara Falls. My problem is with Burlington, my problem is with Caledonia, maybe Welland, those areas that border my community here that may not have people who shoot as much from the hip as I do, but try and get something through the regulations that should not be.

I tend to be considered, here in Hamilton in our tourism circles, as a little bit of a nut because I try to tell people: "Forget it; you are not going to encourage tourism to Hamilton. The only way you are going to get tourists in Hamilton is when Niagara Falls is sold out and Toronto is sold out." In fact, with all the problems the hotels in Niagara Falls and Toronto have been suffering over the last two years, guess what? We have not seen any tourists here in Hamilton, despite the fact that the regional municipality is spending a fortune to try to attract tourists. What they should be doing is concentrating on our tourist attractions. But opening up the city to wide open Sunday shopping is not going to attract any tourists that we did not already have in this province.

Compare the province of Quebec: Another example is downtown Montreal. It is closed on Sundays, period. They do not even have little shops that open in downtown Montreal. I know; I lived there for eight years when I was going to school. Probably one of the biggest tourist centres in all of Canada, the old city in Quebec City, does not even have any retail. They have a few little tourist shops here and there, but you do not have a big mall like here. And even those little tourist shops tend to all be closed down on a Sunday when you go up for Carnaval or in the middle of the summertime. And you know what? The Americans love it: "Wow, isn't this nice and European? Isn't this quaint? Nobody speaks our language." You want to encourage tourism in Ontario? Maybe we should all start speaking French.

**Mr Poirier:** Can I get five minutes on that?

**M. Mongeon:** Certainement, Monsieur Poirier, aucun problème.

**The Chair:** Mr Kormos, one brief comment or question?

**Mr Kormos:** I am going to be brief as usual. You mentioned Montreal, but in Montreal you can buy wine at the dépanneur. You talk about this phenomenon that has happened in the recent past and that is: shopping plaza as tourist attraction, department store as recreational activity. It is a strange thing that is happening and you have experienced it here in Hamilton. Tourism ranks with mom, the Disney characters and apple pie as something that has

acquired a sacrosanct quality. If it looks for the briefest of times that somehow you do not quite agree with the tourist proponents, why, you are not just godless, but you have political beliefs that are alien to North America.

What is happening? Where is this coming from? Who has been developing tourism? Do we really need more \$4.50-an-hour jobs? Nobody has ever supported a family on the wages they have earned in the bulk—not all of it; I am being very careful—of the tourist area. Who has ever supported their family on the wages they earn there? Where does this stuff come from?

**Mr Mongeon:** Just to talk about that \$4.50 an hour, one of the most difficult things I had to do last week was that somebody—he is a male, he is married, his wife works and he has some kids—had to come to me for a loan because what I am paying him is not enough to buy furniture for the kids, and he asked me for an employee advance. It troubles me that is what he gets paid, but I take some solace in the fact that he would do the same job anywhere else in the city and get the same wage.

As to the encouragement of tourism, one of the biggest problems is that municipal economic development departments love tourism. To be terribly blunt about it, one of the reasons they like it is that they get to take trips to all sorts of neat places. Sorry, but when I look at a list of the travels of our local visitors and convention bureau, I see Tokyo; I see Munich; I see London, England; I see Paris, France.

“Wow, I would like to go to those places too. How do I get there?” “Well, you get a job with the visitors and convention bureau.” I said, “But wait a minute, where is your call list for Syracuse, New York; Rochester, New York; Cleveland, Ohio; Detroit, Michigan, because those are the addresses on my registration cards at the hotel? That is where my business is coming from.” “Oh, well, we send one of the junior staff members down to make those calls.”

Like hell we do. I send my top sales people down into those communities, because that is where our tourism business, if any, is. Actually, it tends to be more corporate travellers, but the thing is that tourism is a great catch-all. “Oh, wow, if we had a tourist industry here in our little banana republic,” and when you look at the history of the Caribbean and of developing nations, they all get caught up in this tourism nonsense. You know, “Wow, let’s build a casino.” Another issue that you are going to have to deal with sometime in the next five years is legalized casinos.

**Mr Kormos:** The hell they will.

**Mr Mongeon:** I am sorry, but it is coming. It will have to come, and you are going to be told that it is an incentive to economic growth and all this sort of thing.

Let’s take a look at the development of tourist facilities in Niagara. We have been pouring in money like crazy to develop hotels. The federal government has been making these great tax breaks. What is happening to Niagara Falls? You have about every second hotel downtown and every hotel out on Lundy’s Lane all for sale. You look in the Globe and Mail; every morning there is another one that is up for sale.

Up in Ottawa the Roxborough is up for sale. In Toronto you had the Skyline Triumph just close down; closed.

There is not enough business for all these hotels. Touch wood, here in Hamilton we are not doing too badly for hotel rooms. I mean, this year to date, none of the major hotels has been running much above 50% occupancy. What would a company be like that did not use half of its physical plant? That is what is happening here in Ontario.

Why does it happen? I do not know. It may be as facetious a comment as, you know, tourism is great and it is a sexy thing to get into and you get to travel to different places and that sort of thing. But when you get right down to it, if there is not some major attraction to attract those tourists, if you do not have a totally different ambience, you really cannot create something out of nothing. Trust me, shopping on Sundays ain’t going to create it for you if Monday through Saturday is not doing it for you.

**The Chair:** Thank you very much, Mr Mongeon, very stimulating and certainly at this point in the afternoon—

**Mr Mongeon:** Yes, 4:30.

**Mr Mills:** —it brought us back to life.

**Mrs Cunningham:** Speak for yourself, Mr Mills.

**Mr Poirier:** Your mother would be proud of you.

1650

#### ST CATHARINES CHAMBER OF COMMERCE

**The Chair:** We now have a presentation from the St Catharines Chamber of Commerce, Ceri Hugill and Noel Buckley.

**Mr Hugill:** Thank you very much. Mr Chairman and ladies and gentlemen, my name is Ceri Hugill. I am the first vice-president of the chamber of commerce in St Catharines. We very much appreciate the opportunity of appearing before this committee and addressing a few remarks to you today. Noel Buckley, beside me, is our general manager and he may be able to assist with some of the questions later, depending on how lacking in information and detail you may find my answers.

The material that we have provided to your committee consists of an earlier submission, a letter of today’s date which refers to that, and our most recent comments which you have not had before today.

I should start off, perhaps, by giving a little background into our city, for those of you who may not be familiar—

**The Chair:** If I could just interrupt for a moment, that material is with the clerk. It has not been photocopied, but it will be available for our committee tomorrow. Please go ahead.

**Mr Hugill:** St Catharines is a city of some 125,000. It is on the south shore of Lake Ontario. It is not 40 miles distant from this place. It is a city that has large industry, lesser-sized industries, manufacturing, professional, retail, commercial and industrial services.

Our chamber of commerce consists of approximately 720 businesses, large and small, representing all sectors of the areas of commerce I have mentioned. The one thing you should note, and you may have heard this from other chambers, is that not unlike other chambers, we do not have all of the retail, commercial and industrial trade as members.



Membership in our association is voluntary. It does require a fee and we think those most aggressive and dynamic members of our business community are those who will seek to join our chamber. Participation in our effort and in our work is key, and we want those people who are committed.

We do not, in fact, represent all of the many industries and commercial enterprises in our city. There are probably a few thousand and we are only 720 in number by members. Now some of those members include General Motors, so when you lump that in as one member that is a fairly large constituent. But of course we also have the corner grocer and other similar enterprises which number one or two employees.

Our professional staff is essentially devoted to administering and operating our chamber for the benefit of its members. It does not serve the community as a whole, except collaterally as its interests for its members may spin off and have some good effect.

So our initial position, which was filed in an earlier presentation to the committee, adopted the position that we felt it unnecessary and inappropriate for a chamber of commerce to be delegated some power, some authority, some administrative effort or involvement in dealing with the ramifications of the legislation of the bill, namely, that we would have to pass judgement, review an application, decide whether or not a given enterprise open or close on a Sunday or at any other material time.

We are not set up to do that. We would feel very compromised by that, because we do not speak for everybody in the community. We do not represent everybody in the community and, effectively, our administrative resources would not be suitable for that. That is our initial position that we have presented to your committee.

As far as our chamber policy is concerned on the issue of Sunday shopping, this has been a thorny issue, as you might expect, from Niagara, where cross-border shopping is a major issue at the moment. Our policy has been vetted several times over the past three or four years and it has been difficult to arrive at a policy, but we did recently do so.

It is our policy, and you will see this in the material when you do happen to get it, that we advocate the freedom of choice as dictated by the marketplace, so that each business will respond to consumer demands and its own particular business needs or objectives. It is not unlike what many of us stand for in the chamber of commerce, free enterprise and the right of the business individual to carry on his or her enterprise as he or she thinks fits. We think that is how Sunday shopping should essentially be decided.

That would by implication suggest to you that you have to have legislation that will permit free enterprise to do that. Free enterprise is not necessarily going to have that choice if you limit it or qualify it by a tourist or commercial or heritage building or such other criteria you might adopt, because some enterprise outside that jurisdiction or which does not meet those criteria may be the perfect Sunday shopping spot but by virtue of geographical position is not going to make it. Yet somebody else within the geographical area will not want to open, and that is not going to solve the problem or serve the people

who are there for the purpose. So, again, we come back to free marketplace and let everyone decide as they will.

The more recent thoughts of our chamber of commerce have to do with the draft regulations of the bill itself which specifically provide certain criteria, and if I may take a few moments I will just comment on some of the high points that appear in the material we have filed with you today.

We have reiterated our position as a chamber of commerce that you have already noted. We have looked at the legislation to consider whether at the discretion of a council, an exemption may or may not be granted even if criteria are met. The question is, should not the applicant have some assurance that if the criteria are met, whatever they may be within the legislation, he has a right to the exemption? Should it not then be beyond the discretion of the council to determine the issue? If the criteria are met, is not that enough? Is not that all there should be? If you then interpose the council's jurisdiction or decision-making authority, it may abuse, if you will, the objective of the legislation. I say "abuse" with respect, but there may be certain cases where council would turn down an application that otherwise satisfied the criteria.

What is the remedy for that? Are you going to have court actions proliferating because somebody wants a mandamus or some court order that permission be granted because council had an applicant before it that seemingly met all the criteria? I mean, what is really the objective here? Whose interests are we trying to serve? Is it the tourist? Is it the shopper? Is it the retailer? Is it whatever? But if you interpose that decision-making capacity on council over and above your own criteria, then there is another element, there is another instance where abuse may arise.

With respect to subsection 1(2) of the regulations, we feel with respect that the wording is rather vague. We also wonder who determines the applicability of the wording. How does one define or what are the boundaries of definition to each criterion that is set forth in that section? For instance, I think it is not unknown that some communities have heritage associations that proclaim historical buildings and heritage buildings and so on, but some places do not. Yet those places that do not have such a committee or designating authority have historical buildings or natural attractions. But who decides whether these criteria are in fact satisfied? We find that rather vague and unsatisfactory.

We have probably a lot of places in St Catharines that would be "historical" or "natural" to some people's definitions, but would not quite meet the objective criteria if you looked at it appropriately.

Again, "cultural" or "ethnic": Whose definitions and whose criteria do you use on cultural or ethnic attractions? Concentration of hospitality services: How do you measure the concentration? Do you have to have a mix, or are they all motels on Lundy's Lane in Niagara Falls? Is that a sufficient concentration? Does it have to be a good mix, a good solid mix, to provide many areas of endeavour and interest for those people who visit the municipality? How does the word "predominantly" get interpreted in connection with shopping activities? "Featuring a unified concept": What is the unified concept? Is it your measure? Is it a subjective standard? Is it an objective standard? Who sets

the pattern? Access, fairs and festivals—these are all things that concern us in the wording of the legislation as not being sufficiently defined. We think they are a little vague.

1700

From the comments I overheard of the last person to address the committee, the issue of tourists came up, and of course there is a piece of wording in the legislation, phraseology, that refers to “primarily for tourists.” Again, what parameters do we look to to satisfy that interpretation?

It is our concern now, having previously set forth our position about the administrative concerns with the legislation in so far as the chambers of commerce were concerned, that it is too vague and too ambiguous and too subject to abuse, and you are relying very much on the subjective interpretations of the people who would be making the decisions. Frankly, we doubt that is appropriate.

Those, in summary, are my comments with respect to the different positions of our chamber and our policy and our submission to you today. If you have any questions, obviously we will do our best to field them, including those of Mr Kormos.

**Mr Daigeler:** Just a quick question, and thank you for coming and taking the trip over here. I guess it is not too far, but—

**Mr Hugill:** It is a comfortable drive.

**Mr Daigeler:** Is the position you are putting forward on behalf of the chamber with regard to the general question of Sunday shopping supported by the majority of the retail members of your chamber?

**Mr Hugill:** I have to beg off a tad on that one. Only to this extent, I think, that there is in St Catharines a downtown business association that is essentially composed of retailers in the downtown core. A number of them are also members of the chamber, but not all of them, and not all of our members are retailers. So we have that mix, we have that blessed mix of industrialists, commercial, manufacturing, professional, retail and so on.

That has been our problem in coming to a policy, because the issue has been discussed in prior years. I was chairman of the civic affairs committee two or three years ago. The issue was canvassed then. Just eight people sitting round a table on a Tuesday morning could not come to a consensus sufficiently broad to put a recommendation to our board to adopt a policy. It is only this year that we have been able to do that.

So I cannot say that the policy we have adopted reflects the retailers in our community or even all the retailers within our own chamber of commerce. But of those who have discussed and vetted the issue, they have finally come to a decision which then came to a board of some 23 people and was approved as policy of our chamber.

So it is fair to say that the input of probably 40 or 50 members of some 720 was directly on this issue that led to the policy.

**Mr Daigeler:** I can certainly appreciate that it is difficult for you to give too much of a breakdown, because other chambers are in the same boat. But I am asking that question because yesterday in London a retail member of the London chamber took issue with his chamber and said,

“Well, they certainly didn’t ask the retailers,” or at least he felt they did not ask the retailers, and he thought that if they had asked the retail members of the chamber the position of the chamber would have been different.

So I am trying to get a feel of how divided the opinion is in St Catharines among the retailers, because they would be the ones who would be most affected by this.

**Mr Hugill:** I agree that is true, with the exception of some of the members who provide tourist service and other things like that. I will try and help you out on that again: We did have a retail committee within our chamber of commerce. Regrettably, that fell into inactivity within the last three or four years primarily because of the impact on membership of the downtown association. That is one of the weaknesses, I guess, in having the two associations that represent different people, so we were not able necessarily to get a good cross-section of the retail community.

**Mr Daigeler:** If I could just break in there, what is the position of the downtown business improvement area?

**Mr Hugill:** I am sorry, I do not know. Noel, do you?

**Mr Buckley:** The downtown association, the local BIA, currently does not have a position. The feeling of the BIA right now is roughly a 50-50 split in terms of their membership on Sunday shopping. That is in the city of St Catharines.

**Mr Hugill:** To assist you a little further, that 50-50 split may be as much an indication of pause day concept or wishing to be retailing on Sunday as much as it is a function of the geographical location of those retailers. For instance, if you are a retailer in Port Dalhousie where there are a number of tours and visitors, especially in the summer months a very heavy concentration, you would want to be open 24 hours of the day if you could make the necessary arrangements and all regulations would permit it, but if you are in another area of the city it would not warrant your being open. So our policy reflects the varied geography, the varied economic factors that impact upon our retailers in our community, because there are certain areas of the city people would not bother to go to on a Sunday.

**Mrs Cunningham:** Thank you for being here today and giving us even more information to think about. I think you were at the committee last time. As a matter of fact, I think we met. Mr Buckley, is it?

**Mr Buckley:** Yes.

**Mrs Cunningham:** At that time I know we considered the thoughts—

**Mr Daigeler:** See what an impression you made?

**Mrs Cunningham:** He did make a good impression. I can remember him from two years ago. You were here for the former presentation so I am going to ask you a question about that. It was the first time I heard somebody so vocal about distinguishing between tourism attractions and tourist areas and you have just given me an example within your own community where you possibly could come up with tourist attractions as opposed to a whole tourism area.

By the way, I represent London so you can imagine my dilemma yesterday as the city council said, “We’re not in favour of Sunday shopping,” and then the chamber of



commerce came and said—they took your position, actually, so I am sure there will be a few discussions today back home, because one was wondering who had which mandate to say what they did.

Speaking as a member of the opposition, I cannot imagine this government, given the position it has taken of common pause day, saying, “We’re going to let the marketplace take its toll,” so to speak, “on stores being closed or open on Sundays.” Given what we have had, they are probably going to take a very serious look at this local option, otherwise the responsibility is in the municipality. They may in fact go to where I think is their responsibility, and that is a provincial body that makes some designation. I am wondering if you could live with that, given the tourist attraction versus area in your own municipality. Would it be a compromise position for you, or do you have a compromise position?

**Mr Hugill:** I think we would like to respond by saying the criteria I have already commented on do not appear to be fair and equitable across the marketplace, at least as we would see it applied in our municipality.

**Mrs Cunningham:** I agree.

**Mr Hugill:** That is a real problem, so if we have to back off from the free marketplace and the supply and demand of the normal impacts that prevail as a result of that, then I think we would say, let’s make it fair and equitable to all enterprises and let’s be very leery of imposing any criteria that could or would be arbitrary, either in definition or in application.

1710

**Mrs Cunningham:** I certainly share your view on it. It is inappropriate for a non-elected body to have to pass judgement. I was shocked to see that as part of the regulations. But if they very carefully think through what they really want to exempt from Sunday closures in the area of tourism, they could come up with a very narrow definition of what tourism really means in Ontario. If that is the route they want to go I guess we will be having some more hearings somewhere.

**Mr Hugill:** And I may have to make another presentation?

**Mrs Cunningham:** Mr Buckley is certainly becoming experienced, so perhaps—

**Mr Buckley:** I would just stay here.

**Mrs Cunningham:** I think the good thing about living in Ontario right now, given our history, is that people get fed up with making presentations before committees if committees do not listen. I see a very big difference in the presentations this round as opposed to two years ago, because I think there was a very strong opinion on behalf of the public of Ontario that they supported a common pause day and that the legislation the Liberals enacted did not support that. We are hearing a different story right now; we are hearing more of a compromise position. But we are also hearing that there is not a lot of support for this legislation and there will have to be major changes. We have even heard from you today two specific changes I personally

will take forward during the clause-by-clause, in the form of two amendments based on what you have said.

**Mr Kormos:** Let’s talk about the legislation, because you did and you talked about it in the most hyperpolite, indeed kind, language lawyers are inclined to use. I get the impression that in the privacy of your office your assessment of this legislation was perhaps not only more spontaneous but maybe to the point of eliciting a scatological comment. When I read between the lines, as I am sometimes inclined to do, am I getting the feeling? Because a few other people who are lawyers have been in here and commented similarly on the legislation. We are not just talking about one or two areas or one or two clauses that warrant attention, we are talking about a bill with its regulations which, according to the people who have made representations, has some real problems inherent in it, and notwithstanding what Mrs Cunningham says about her intention to bring one or two, perhaps more; I do not want to predict what she—

**Mrs Cunningham:** You’re right on one or two.

**Mr Kormos:** Is this a piece of legislation that is going to be problem city if it is not addressed and readdressed in a more overall perspective? Do you anticipate real problems here?

**Mr Hugill:** I certainly meant to imply that the application of the criteria as they are defined or set out in the draft regulation would be very difficult to apply. From a chamber point of view, if we had to exercise our authority, supposedly delegated through the legislation to us, it would be on a very subjective level and one would always be looking over one’s shoulder at the people who might feel wronged by which decisions had been made in relation to their application. We do not feel particularly well suited to that and I am not at all satisfied that a subjective test is appropriate. So if anybody has to enforce a regulation, I am sure everybody wants it to be well defined and clearly set out and not capable of too much discretion, because to delegate the discretion is perhaps just going to lead to a complex, confused number of applications in different geographical areas of the province. Then you run into inconsistency and it just becomes unworkable. That is a real concern and I think that should be tightened up.

As far as your scatological comments, Mr Kormos, the person who reviewed the legislation preferred not to come today and he sent me.

**Mr Kormos:** People have spoken about the inappropriateness of an elected political body, city council—and you know I was on city council for one three-year term—performing this quasi-judicial or tribunal sort of function. I think it is very hard for politicians who are there to make political decisions. In the context of this legislation it seems they will have to make, I guess judges would say, findings of fact. They would have to interpret the law and then apply the law. That to me smacks of a judicial or tribunal function. How appropriate is it for elected bodies, city councils, to do this, especially when—people have talked about the problems and principles of natural justice. Let’s say one of the applicants has spoken to a city councillor about the matter, separate and apart from the presentations

to council and the impact that might have. Do you see problems in that area? I am not particularly enthusiastic about the municipal option, but I am interested in what you have to say, I guess as a lawyer as much as anything else.

**Mr Hugill:** My view on the council situation is that, in essence, in applying the regulations to an application it would not be in much of a different position than the chamber of commerce executive or administrative group. I would think they might be a bit more sensitive to certain ramifications of their decisions because they do have to run for re-election at some subsequent point. The chamber of commerce would feel even more constrained because really we are a limited organization, a limited interest group with limited philosophies and objectives and our own criteria. We do not purport to represent the municipality as a whole, we represent those who belong. I think it would be extremely difficult for a council to do it. I do not know, Mr Kormos. My problem with dealing with the political impact of the issues you have raised is that I am not noted in my area, as you probably know, as any kind of politician, either supporting politics or political parties or being involved directly in politics. I am not the kind of person I think you should look to for a political response. I do not tune very well to that melody.

**Mr Kormos:** I was interested in a more lawyerly response about the capacity of municipal councils and the problems that attach to it when they are called upon to interpret and apply legislation. We can either leave it at that, or that may elicit further comment from you.

**Mr Hugill:** My problem with giving a legal opinion is that I have never worked in a municipal setting and I really feel at odds with that. I think the Attorney General's ministry and other sundry lawyers in government service would be far better qualified to comment. I am sorry, I do not wish to get involved in that.

**Mr Kormos:** Fair enough. I was not looking for a freebie.

**Mr Hugill:** A freebie is only worth what you pay for it anyway.

**The Chair:** Thank you, Mr Hugill, Mr Buckley, for an excellent presentation.

Before we adjourn I would like to call upon the Vice-Chair.

**Mr Morrow:** Thank you, Mr Chair. I really appreciate you allowing me to do this this evening in my home town of Hamilton. I would like to take just a moment to thank Hamilton-Wentworth for having us here. It has been a mighty fine day and I am sure we have all learned a lot. Again, thank you very much.

**The Chair:** Thank you, Mr Morrow. I would also like to make a short mention of Mr Dick Van Duzer, a high school history teacher and part-time political science professor, who has sat through our hearings all day. Thank you.

We are adjourned until 9 o'clock tomorrow morning, committee room 1 in Toronto. The subcommittee will be meeting at 8:45. We are adjourned.

The committee adjourned at 1720.



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J-47 1991

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 29 August 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le jeudi 29 août 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 29 August 1991

The committee met at 0904 in committee room 1.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

### CITY OF SAULT STE MARIE

**The Chair:** Our first presenter is Mayor Joe Fratesi, the mayor of Sault Ste Marie.

I believe the committee members have already received a copy of your correspondence in regard to your wish that we appear in your city. Unfortunately we were not able to change schedule because people were not able to be contacted in July, but I think I speak for all of us in saying that I wish we had been able to, sir. You have approximately half an hour. The committee members, I am sure, will have many questions for you, so if you could leave time after your comments for those questions I am sure it would be appreciated.

**Mr Fratesi:** Thank you, Mr Chairman. Just at the outset, let me thank you for the opportunity of addressing you this morning but, having said that, reiterate and reconfirm what I have said in my letter to the committee of July 10 expressing not only my personal disappointment but the disappointment of my total city council as well as the citizenry of Sault Ste Marie, regardless of their point of view on the issue, at the fact that this committee chose not to hold hearings in Sault Ste Marie as it travelled about the province.

This issue is one which has had major play and consideration over the last four or five years in my city, and there is little question that the committee, if it is generally interested in finding the best legislation and not just propping up or supporting what has been proposed, would have benefited from coming to a community which would have had many people talk about what in fact has been the case as opposed to what might be or what might have been.

I appreciate that this issue is a delicate one for this government, as it was for the last government, but it is hoped that legislation can be passed ultimately which will meet the needs of all parts of Ontario, not necessarily legislation that might solve a problem in Metropolitan Toronto. I

think all other parts of the province really have had quite enough of having to take the medicine every time Metropolitan Toronto has a cold.

Sault Ste Marie had a lot to say about this issue, and in spite of a specific request to have hearings, the committee passed on Sault Ste Marie. The advertisement for committee hearings throughout the province followed assurances from my member, Tony Martin, that the legislation that was coming should not prevent Sault Ste Marie from carrying on what had successfully worked over a four-year period of time. The advertisement for hearings in other parts of the province followed assurances from my member that the announced legislation was only in proposed form and that a travelling committee would listen to arguments of why places like the Sault should not be prevented from carrying on.

The Solicitor General and the committee were told and must have read how things worked and worked well in Sault Ste Marie, yet the committee chose not to attend in the city in Ontario that probably had the most and perhaps even the best advice based on experience to pass on. So it should not surprise anyone that I was shocked and disappointed to hear that a government which was talking about the importance of new working relationships with municipal governments and talking about the value of input from the people it serves would not ensure that a city like Sault Ste Marie, given the experience with this issue, would not be visited after it had gone through what I remember almost seemed like the Third World War dealing with the issue four or five years ago. I can only guess that the committee perhaps did not want to hear what we had to say. Hopefully I am wrong, and maybe that will be corrected as a result of today's attendance.

After reading the advertisement, I immediately contacted Tony Martin and expressed my disappointment. I was told that the committee wanted to stay away from cities where the cross-border shopping issue might get mixed in. I could not understand that, because I saw Windsor, Thunder Bay and Kingston as cities that were being visited, and certainly the city of Windsor has as much of a cross-border shopping problem and issue to solve as does the city of Sault Ste Marie.

I also contacted the committee clerk and asked why the Sault was overlooked and I was advised how the decisions were made with respect to locations. I was also advised that when consulted in the Sault, organized labour, through the labour council, suggested that the Sault should be passed over because members were split. I would suspect that perhaps is the case throughout the whole of Ontario. I was also advised that the president of the Sault Ste Marie labour council indicated that there was really no need to upset the apple cart in Sault Ste Marie. The president was advised that border cities would not be visited because the

committee did not want the two issues intermingled and the issue clouded.

I wrote to the committee. You have a copy of my letter of July 10 that expresses that disappointment. I immediately contacted the president of the labour council, and when I shared the ad with her and pointed to Windsor, Thunder Bay and Kingston as locations, she almost went through the roof, because that was not her understanding of the committee's locations.

I have a copy of her letter to the committee, dated August 19, where she complains of the lack of hearings in the Sault and requests a special date to be set. The letter, which I am sure you all have, is indeed a very interesting one because it comes from organized labour, which was very vocal against Sunday shopping in my community and I suspect very vocal against Sunday shopping in any community that considers it and which has been pushing for the legislation that protects workers against working on Sunday when they do not want to; the common pause day concept.

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I would like to quote from Sharon Graham's letter to the committee, on page 2, the second paragraph: "My initial response to not having it"—the committee—"come here was the fact that our community had already dealt with the matter and it would appear to be to the approval of most citizens, with the hours that they currently are. Many of the proponents against this a few years ago have assimilated into the practice; there are a few of us committed against Sunday shopping who have not succumbed, but we are truly in the minority."

The last paragraph of her letter is especially worth quoting: "When you review the input from communities you have chosen and gather the data, would it not be appropriate to consider a special day's hearing for Sault Ste Marie? This would be an opportunity to collectively review the realities of a practice that has been voted on by the citizens and in practice for almost three years" Actually, it is over four years. This is what I referred to: coming to a community where we can talk about what has been, as opposed to listening to communities who talk about what might be or what might have been.

I continue to quote: "I eagerly await your comments and more importantly the potential ramifications from your hearings and the possible changes to a system which 'seems' liveable here in the Sault."

Sharon's last comment is really the nub of Sault Ste Marie's presentation to this committee and what the Sault has been trying to say with respect to the proposals that you are considering and why we are so disappointed and even angry that you decided not to come to our city to hear us and to see for yourself how a local government has taken what was a political hot potato and come up with an arrangement which is workable, or as Sharon says in her letter to you, liveable.

I want to congratulate the government on its commitment to a common pause day for those who wish it. We applaud the amendments to the Employment Standards Act which protects workers who do not want to work on Sunday. Some day, I guess, all of us would hope that this

protection could be extended to all workers, but that may be an impossibility, especially in a city like my own where industry, the hospitality and service businesses and health care operate as important parts of our community seven days a week.

We fully support what the government has before it and what is being considered to protect the worker who wants Sunday as a common pause day. I can tell you that in the Sault in the last four or five years the only people who have worked on Sunday in the retail business are those who wanted to work and who welcomed the work. The amendments will simply formalize that and for that we offer our support.

It is the rest of the proposed legislation which creates the problem because what it does is really take away from us an important feature of our community, an economic feature of our community that we want to retain.

Let me give you a brief history of the issue in the city of Sault Ste Marie. Since September 1, 1987, the city of Sault Ste Marie has had in effect a bylaw, passed under the Retail Business Holidays Act, which permits retail business establishments in the city to remain open on Sundays. The first bylaw was passed for a one-year trial period. When it expired on August 31, 1988, city council passed another bylaw to the same effect which extended to January 16, 1989, so as to continue the experiment until after the municipal election in the fall of 1988.

As part of the municipal election in 1988, city council authorized a question to be put on the municipal ballot regarding Sunday shopping. The question was worded as follows: Are you in favour of city council passing a bylaw which would allow stores to remain open on Sundays? Yes or no. The result of that ballot, and you had 35,200 people voting on it, was about 19,700 people voting yes and about 15,500 people voting no—about a 60-40 split back then. I can assure you that if it were put on the ballot and the election was to be held in the next two months, the numbers would probably be 95% in favour of continuing Sunday shopping and 5% opposed.

I think the fact that it was on a ballot in a community like Sault Ste Marie, as far as the Sault is concerned, is going to give you a better handle or a better statistic than something like a Gallup poll might do, given the fact that this many people came out and expressed their opinions.

At its first regular council meeting in 1989, the new council passed the bylaw which is in force today. That bylaw allows retail business establishments to remain open on Sundays between 1 pm and 5 pm. These hours were purposely chosen to make it a worthwhile permission to the retailers, but also to ensure that there would be no interference with traditional Sunday worship and the importance that families place on Sundays, Sunday dinners, family outings and the likes of that. I can tell you that this has worked in our community.

The bylaw does not deal with other holidays as defined in the act. It was passed under the tourist enhancement provisions of the legislation, and the bylaw contains a section that requires the retail business establishments to remain closed on certain Sundays, such as Easter Sunday,



New Year's Day, Canada Day, Christmas Day, or Boxing Day if it should fall on a Sunday.

All three bylaws that the city council passed were city-wide and applied to all retail business establishments. Therefore, large retail business establishments as well as small ones are permitted to stay open on Sundays. Prior to the first bylaw being passed, city council held its series of meetings inviting public input, at which it received submissions from individuals and persons representing groups for and against the bylaw. The presentations were extensive, they were comprehensive and certainly all points of view were expressed. If you want to talk about the good, the bad and the ugly, all of that came out during those hearings.

So there was, without question, the opportunity for public input prior to the passing of the bylaws in our community and, as indicated, following the input process the matter was placed on a trial period, and following the trial period, it was placed on a municipal ballot so that the folks could be consulted.

City council, in a very strongly worded resolution only months ago, recently reconfirmed its position that after four successful years with absolutely no problems in our community, we would not want legislation passed that would alter our ability to deal with the issue on a continuing basis.

In Sault Ste Marie, those who want to stay open, stay open. Those who want to close, close. Those who want to work, work and those who do not want to work, do not work. We would like to see that the ultimate legislation will not interfere with what has worked so successfully in my community.

The problems with the bill that you are considering obviously talk about sizes, square footage of store. Anyone over 7,500 square feet or having eight employees or more would be affected. Department stores and grocery stores and many of the other retail businesses, the K marts and the Canadian Tires, which do so well not only because of locals but because of shoppers visiting our community, would all be affected in my city. Basically the legislation would kill any experience with Sunday shopping.

There is no apparent rationale or justification for the limit being placed on 7,500 square feet or eight employees or more, at least in cities like Sault Ste Marie. Under the draft regulations, stores selling exactly the same products could be treated very differently and that different treatment would be based solely on the size of a store or the number of employees. Certainly that would be unfair.

Subsection 4(2) of the proposed act states that a principle that should guide council is that holidays should be maintained as common pause days. How is that principle enhanced by the artificial, arbitrary limits on square footage or the number of floors? We simply cannot understand that. The intent of the act is to maintain or to develop tourism when it deals with exceptions; then the regulations and the exemptions should apply regardless of the size of the store or the number of employees.

The act is treating the larger retail establishments differently from the smaller establishments and is putting the larger retail really at a competitive disadvantage. Very few

of the larger retail business establishments will be able to satisfy the criteria set out in 2(2)(c) of the regulation unless a very broad interpretation is given to paragraph 4.

Even if the four criteria in (c) are satisfied, how is the retailer going to satisfy 2(2)(b), which requires its services to be provided primarily for tourists? Do we expect that someone will stand at the door and check to see whether you are a tourist or a local when you come in the door? It makes it an unworkable situation.

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The legislation as drafted will encourage retailers to try to find ways around its provisions. Artificial and arbitrary limitations should be eliminated completely from the proposed legislation.

There is another reason why the Retail Business Holidays Act should not be amended. The existing legislation has been the subject of numerous court rulings and court challenges. We are now at a point where the existing legislation is starting to become clear, it is starting to be interpreted by the different levels of court to put a greater understanding, and it has taken a long time to arrive at the kind of understanding. Introducing further amendments will bring about further court challenges and further confusion and no doubt the whole ball will start rolling again. There will be more uncertainty introduced as retailers challenge different provisions in the proposed legislation.

Only peripherally mentioned earlier in my presentation was the cross-border shopping problem in the province, especially in communities like Sault Ste Marie. The Ontario retailer in border cities is facing major challenges. I think all of us know that. It is difficult enough keeping the Ontario shopper at home. It will be even more difficult to do so if the large retailers in border city shopping centres are closed. Often these large retailers in shopping centres are the major draws for the shopper and if they are closed, the shopper will choose to shop in the United States, where he or she can shop at large retail stores just as easily as at the small ones.

We are not arguing that what is right for us in Sault Ste Marie is necessarily right for another city, Toronto or Sudbury, and I guess your hearings in Sudbury pointed that out to you very vividly, where you had two different communities, two different chambers of commerce, and maybe even two different labour groups giving to you two very different points of view. What we are saying is that the local option which has been in the previous legislation should be allowed to continue.

In summary, the position of the city of Sault Ste Marie is that there should be no distinction between retail business establishments based on square footage or number of employees. It should be left to the discretion of the local municipalities whether to pass a bylaw under the act, and that decision should not be encumbered by such an artificial requirement as tourist enhancement. Obviously any council in this province can bring itself within at least two of the categories which are set out in subsection 1(2) of the proposed regulations.

Again, the amendments to the Employment Standards Act are good. They should be used to ensure that any employee who wishes to have a common pause day in fact

is protected by new legislation, but as far as everything else is concerned, in those places where things work well, and they have worked well in Sault Ste Marie, please make sure that the legislation, as it ultimately is determined, allows for us to continue with what works in my community. I guess there is an old adage that certainly applies from our point of view: If it ain't broke, don't fix it. That certainly applies to what is happening in Sault Ste Marie.

Mr Chairman, I would be pleased to answer any questions that you or any of the committee members may have with respect to this issue, and we can speak from experience in our community.

**The Chair:** Thank you very much, Mayor Fratesi. I am sure many members will have questions.

**Mr Daigeler:** Thank you very much for coming to Toronto to present your case. I will have to let the government members of the committee defend themselves with regard to the decision not to go to Sault Ste Marie. I think the opposition parties tried their best to include your city in those hearings. However, we were not successful, as obviously we do not have the majority on this committee.

I would like to ask you a couple of questions. First of all, based on your experience, what has been the proportion of stores that opened versus those that closed? Also, what has been the experience with the malls? We have heard the arguments very often that if one store opens, the other one is forced to open as well; if, in a mall, Sears opens, everybody else will have to open. Also, because of the lease arrangements with the mall owner, individual retailers, even though they would like to stay closed, would be forced to open. What has been your experience in that regard?

**Mr Fratesi:** As far as the downtown area is concerned, most stores chose not to open and they are not complaining, believe it or not, that the stores in the malls are opening. In the malls, most stores have chosen to remain open. Not all; the mall owners have not taken a hard and fast position with anyone who wanted to remain closed.

You will go into either of the two major malls—one of the malls is 450,000 square feet and the other is 300,000 square feet—and you will find that some of the stores are closed and most of the stores are open, but it has been self-policed. It has not been a problem. Malls have not forced the smaller stores, whether they be the nationals or the locals, to open. Again, that is what we think is truly good about the scenario. Those who want to do so open, those who want to stay closed remain closed. Those who want to work are working, and those who do not want to work have not been asked to work or forced to work.

**Mr Daigeler:** We also have, of course, very often heard the argument that despite the best labour legislation to protect people who do not want to work on Sunday there would be this indirect pressure. Possibly you would be passed over for extra hours at a later date, or promotion, or whatever it is that you cannot really put your finger on but could possibly be put in connection with your refusal to work on Sunday.

Do you have any evidence in that regard, Sault Ste Marie being a town that is very much, I think, shaped by labour and the union movement? If anywhere, we should hear something there if that occurred.

**Mr Fratesi:** I can only make this observation. As the mayor, I can tell you I have had no problem, not one single problem brought to my attention, and I would think that I would have.

I make the observation also that the position of labour, as it now appears to be from Sault Ste Marie, is vastly different than it was when this issue was first talked about four or five years ago. I would venture to guess that if there were one single problem with people being directly or indirectly coerced into working on a Sunday when they did not want to, our labour council or its various unions would have brought that to my attention and certainly would have brought it to the attention of this committee.

Having said that, we have no problem with that being formalized, the indirect or the direct coercion that might be out there in the absence of any legislation to protect workers for a common pause day, but only those workers who want that protection, only those workers who want a common pause day. It has worked in the Sault and there has been no problem whatsoever.

**Mr Daigeler:** As a Liberal, I am of course pleased that you say, "What's not broken, don't try and fix it." In fact, we heard that several times across the province, that the municipal option that was instituted by our government has worked well and that many people in fact acknowledged that they had changed their minds on that. They were very sceptical about this beforehand, but given the experience, it seems to have worked. The domino effect that many people feared did not occur. Certainly Sault Ste Marie is not the only city that has changed its mind on it, so I am pleased that you confirm that position. However, it does not seem very likely that the current government is going to follow that. I think both the past Solicitor General and the new one very firmly indicated that the principle of the bill is going to stay.

In the light of that, how do you feel about these tourism exemptions? Yesterday in Hamilton, somewhat to my surprise, a lot of people, including municipal representatives, argued that the province rather than the municipality should decide what is a tourism area and what is not. They argued very strongly for a provincial board to which Sault Ste Marie or anybody else would have to make application, and it would then decide for your area. How do you feel about that?

**Mr Fratesi:** I think it would be difficult for the province to do that. It might be easier when you have various boroughs or townships in a metropolitan area coming up with something that would be standard, but I think it would be difficult for you to determine what would be important in selling tourism for Sault Ste Marie. We are much different from Sudbury, we are much different from Thunder Bay, and we are 400 miles away from one city and 200 from the other.

We would hope that, first of all, you accept that tourism is an important part of the economy of Sault Ste



Marie. If you accept that, you accept that the activity that comes with a Sunday opening is important to the economic life of the community.

Last, whether we like it or not, the cross-border shopping issue is very much at play. If the stores are not open on Sunday in Sault Ste Marie, the folks will have yet another reason to shop in Sault Ste Marie, Michigan. If the K marts and the Canadian Tires and those large stores are not open, they will go to the K marts and the Meyers in the Sault Ste Marie, Michigan, area. It is 75 cents away, it is lawful and it is 10 minutes away. It is one bridge three miles away. So the cross-border shopping issue does have something at play; you are talking about keeping people in your community and inviting people from the smaller areas outside the city into your community on a Sunday afternoon. Shopping has become probably very close to the number one family activity. I know my wife has me tag along with my kids, and we go out and we spend several hours shopping.

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So would I want the province to set up standards? I made the comment earlier that too often the provincial government—and I have expressed this concern throughout my term as mayor, six years—sets the standard for the whole of the province to solve a problem that may be peculiar to one area—Metropolitan Toronto, for example. We have courthouse security, for example, in Sault Ste Marie that is costing us a fortune because of problems in the larger areas, and that was one particular issue where I came before a committee like this and saw many others like me come before a committee like this. It sounded like the arguments were good ones and sounded like folks were listening, but nothing changed in that legislation.

I am hoping this committee does not operate that way. I am hoping that every community will be looked at differently, the dynamics differently; what is tourism, and what might be considered enhancement of tourism differently; and what might work in one community might not work in another. I am hoping that the legislation ultimately recognizes that and allows, as it often does in other areas, local government to take care of an issue which might be controversial. But again, we did not shy away from this one. We did not say to our folks, "We'll wait to see what the province decides." We took on the issue. We had the hearings, and we decided what we thought was best within the existing legislation for our city, and it has worked well.

I think every city should have that opportunity, and if they decide that it should not be in their city, that is fine. I accept that. But please, please do not take away something that has really become a way of life in my community and the absence of which really is going to create even more problems, and you folks already know the problems we have.

**Mr Carr:** Thank you very much, mayor. I too wanted to just point out that both the opposition parties fought long and hard to come to the Sault. I had a particular interest. It eventually came to a vote and you guys won and that is the fact.

**Mr Fratesi:** I know Peter Kormos wanted to come.

**Mr Carr:** I am sure he did.

**Mr Fratesi:** Good morning, Peter.

**Mr Kormos:** How are you doing, your worship?

**Mr Carr:** In fact, having travelled to the Sault many times when I played for the Toronto Marlboros, we went up there to play the Greyhounds many times, so it would have been a good chance to go back there.

You mentioned the fact that if a vote were held now, approximately 95% of the people would want it. I was wondering what the numbers would be of workers, because, as you may know, this government has said that if you ask people if they want Sunday shopping, they say yes. If you ask people if they want to work Sundays, a larger percentage would say no. What is your feeling about the people now working in the industry? It would be a bit of a guess. How do they feel about it?

**Mr Fratesi:** I would think the percentage would even be higher than 95%.

As I indicated, there has not been a problem in my community. You have the letter from organized labour in my community, and I assume Sharon knew it would be published, it would be circulated, it would be looked at by opposition members. I am sure she chose her words, and even having chosen her words, there is a clear indication that labour's position in my community, and I suspect throughout most of the province, has changed greatly on this. There are people who are part of labour, who are working on Sunday, who welcome the work. There are people who are adamantly opposed to Sunday openings, store owners as well as employees, who now welcome it. And I suspect there are a lot of people who belong to the labour movement, at least in Sault Ste Marie, who would be down at Queen's Park screaming and hollering at their members because they have had something taken away from them that they really enjoy, think they need and know is working well in a community. Organized labour in my community would not understand why this government would take away something that has worked in Sault Ste Marie for four years.

**Mr Carr:** How much of that do you think would be a part of the tough economic circumstances? I know your community, unfortunately, has been going through probably worse than anybody or certainly very difficult times, and there may be a lot of people who are saying, "Well, if everything was going fairly well, we wouldn't want it," but because of some of the problems, do you see it as being sort of an offshoot of some of the tough economic times?

**Mr Fratesi:** I do not think so. I think even if we wound the clock back to three years ago or even four years ago when we first put it in place and people started to use it that people would very feel very much as they do now, that it is ours and please do not take it from us. Tough economic times, as I indicated, and the cross-border shopping problem would just compound the effect it has in our community, but I do not think the feelings of people would alter significantly.

**Mr Carr:** There are large sections of this province that are going to open. Windsor has voted for it. Sarnia the

other night did, yourselves, Kenora and so on. A lot of them are saying: "Thank you very much, province. You have given us this tourism exemption." It is so broad we have gone from driving a car to a truck to a plane through. They are extremely broad, and a lot of municipalities are saying: "Thank you very much. We will take it." Because really, what it means is any part of this province can classify under those tourism exemptions, and rather than handing it to the municipalities and saying, "What do you want to do?" there has been this loophole. They have said, "No, we're going to have the common pause day, but you can take these tourism exemptions."

There have been a lot of groups that have come before this committee that said we should toughen it, which, therefore, would make it a lot tougher. Looking at this bill and this piece of legislation, do you think the tourism exemptions are broad enough?

**Mr Fratesi:** Absolutely not. This legislation, if passed ultimately in the present form, would kill Sunday shopping in Sault Ste Marie. It would be over, without question. The size of store, the number of employees and some of the other criteria in there would kill it in my community, and I can tell you that is not what organized labour or anyone wants in Sault Ste Marie. But that is effectively what it would do. We are not that kind of small community that has quaint little shops that attract the tourists. We have people come into our community who want to shop, and if a tourist coming into my community is like myself and perhaps my wife, when we go travelling the first thing we do is hit the department stores to see what is different in that city. Very often when you go to, say, a waterfront setting, you may want to find a souvenir shop, but you do not shop all day for souvenirs. Or, at least, I do not find most people do.

**Mr Carr:** Right. You know, the tourism exemptions are such that the Sault would classify, because you meet probably all the criteria, if not one or two. That is what municipalities are doing.

One of the concerns is, by the province not taking the responsibility, we have really taken the fight back to the municipalities, and maybe you could just explain some of the fights you went through, because they are pitting shop owners against shop owners side by side, side by side. What are some of the experiences you had in the fights that went on during this period of time at the local level?

**Mr Fratesi:** We had what I described as the Third World War; the good, the bad, the ugly. We had people from the various religious groups come out and suggest to us that churches would be emptied, that we would be taking away from God's time on a Sunday morning, and we said: "Fine, we accept that as a concern. We will make sure that our hours are altered." We had people from all of the different social services say that Sunday shopping would tear at the family fabric, and that certainly did not happen. As a matter of fact, we think we have given another event for folks to do as a family on Sunday, and we made sure that the hours were tailored so that Sunday dinner was not interfered with.

We had labour come out against business, and labour and business are singing out of the same hymn book now. But labour and business were pitted against each other on the issue at length, and it was a very emotional issue on both sides, and we said, "We'll try it, and at the end of trial period, we will test to see whether all of these negative things materialize." And they did not. At the end of the test period, we said, "Okay, fine, we'll go back to the folks and we'll ask them for their advice." We put it on the ballot and the folks wanted it.

It has been in place for four years, and I would bet my last dollar that the ballot would come back 95 to 5 to keep it going, in spite of all the emotion that was expressed on both sides of the issue when we went through it. We are one municipality that says: "Fine, give us the hot potato. We'll deal with it." We did. Now we are saying: "Don't take it away from us. We've dealt with it." We went through a heck of a lot to get to where we are, and we have put it in a form that is workable. I applaud the government for its principle of a common pause day for those who want it, and that part of the legislation is great, but it is the rest of the legislation that will create the problem.

0940

**Mr Lessard:** Thank you very much for your presentation. You certainly put in a different perspective for members of the committee. I should tell you, as well, that I was not a member of this committee at the time the decision was made not to go to Sault Ste Marie. I may have argued to go there, had I been a member. However, I cannot really say. I think an argument that could be made is that we would be concerned, as a committee, to go to communities that have not been able to deal with this issue in the same way as the Sault, and that may have been a consideration.

You talked about legislation that is passed by the provincial government that has application throughout the province, and that is our mandate here, to do that. Sometimes that may have an effect on communities which may feel that they are different from Toronto, and people around the province are different as well. I can tell you that my experience when I am a tourist is not to go see what is different in shopping centres or department stores in different cities. I think something that we may perceive as a problem is that department stores are the same when you go to different communities, if they are all the same store, and we would like to try to encourage some uniqueness in the province.

I guess the problem we are faced with is, how do we deal with a city like the Sault that has been able to deal with this issue, and seems to have been able to deal with it fairly effectively, and still be able to satisfy our mandate to pass legislation that is going to have uniform application throughout the province and try to meet our commitment to have a common pause day for as many retail workers as possible? You mentioned that you like that part of the legislation, but if you follow the rest of your submission, the number of people who would be able to take advantage of a common pause day would be fairly diminished. It would almost disappear, I would think, for most people, even with the protections under the act.



You talked about legislation that you can live with. I want to know what changes we can make to this bill that you can live with, but still apply to other cities in the province which, quite frankly, said: "Look, we don't want this. This is a provincial responsibility. Why don't you deal with it?" How do we satisfy all of those people?

**Mr Fratesi:** There are a couple of points, I suppose, that I should make. First of all, you may have already in place the old legislation that allows that, and maybe some minor adjustment would solve your concerns.

Dealing with the point where you indicated that you, as a provincial government, have a responsibility to uniformly make laws for the province, I do not disagree with that, but there are many pieces of legislation where you have a working relationship between the provincial and municipal governments, where you share that kind of responsibility: the Planning Act, for example, where you do not say in provincial legislation that Sault Ste Marie must plan its downtown area like Sudbury's or like Metropolitan Toronto's. You give to local government the authority to make decisions that have a local flavour and make sense locally.

You have the Municipal Act, which gives that kind of authority to municipalities to pass bylaws that might be different from one community to another. But there is an overriding principle in each of those pieces of legislation that is uniform. I am saying to you, this piece of legislation probably falls into that same category.

The overriding principle of the government's desire to give protection to the worker who wants a common pause day is okay: no problem, put that in there. But if he does not want a common pause day, or if he wants to work and a community wants to have, for whatever reason, Sunday opening in a way that works for it and does not create problems, I would hope that you, as a provincial government, say, "That's the kind of legislation where a good working relationship between the provincial government and the municipality can work out."

You do not have to make the Sault the same as Toronto or Sudbury for this kind of circumstance, just as you did not for zoning laws or for other things, bylaws and the like. I am hoping this legislation can confine whatever is required to allow that to happen. You will have problems in communities, and there should be the protection for local government to invoke whatever the provincial government wants to offer as protection, but you can accomplish both end results. You can with a piece of legislation.

**Mr Lessard:** I hope so.

**Mr Fratesi:** This piece does not really do that. It certainly does not do it for my community.

**Mr Morrow:** I am going to really try to be very brief so hopefully Mr Fletcher can get on. I just want to clear up a couple of comments and then ask you a really quick question. You have an awfully fine member in the Sault with Tony Martin. Tony and I had a meeting and he expressed your exact concerns to me about not meeting in the Sault, and I really appreciate Tony doing that. I explained to Tony that we had an awfully hectic schedule this summer. We visited 11 cities. That is a really rough schedule.

You also talked about the labour council—I do not have your exact quote—saying that it advised us or we advised it that no, we would not be attending. I can tell you, as a person who was directly involved in that, no, that never happened.

You said if you had a plebiscite today, 95% of the people would be in favour of Sunday shopping. I propose to you that if you put another question on that plebiscite, "Do you want to work on Sunday?" you would probably have the same response—95% of the people would not want to work on Sunday. What are your comments on that?

**Mr Fratesi:** First of all, I agree with you, Tony Martin is an effective member and he did try to talk the committee into coming to the community for the reasons that I have expressed.

On your second point, you are incorrect when you talk about the labour council, because in the letter to the committee of August 19, Sharon says to the committee members that she was contacted and she did indicate that her feeling, on behalf of labour, was that you should pass on the Sault: "Don't upset the apple cart."

**Mr Carr:** Do we have that letter?

**Mr Fratesi:** You do have this letter; at least it is addressed to the standing committee. Has that been circulated, Mr Chairman?

**The Chair:** No. Maybe Lisa can make copies.

**Mr Fratesi:** I have my copy. The things I referred to in so far as her having been consulted about whether the committee should come to the Sault she acknowledges in that letter to the committee. I thought you had the letter. There is little question in my mind that the committee asked whether it should come to the Sault and labour said, "Don't come because things are working okay."

Interjection.

**Mr Fratesi:** I am just reading from the letter, sir.

On the last part, if you were to put the question on the ballot—I do not care how you word it—the feelings of the community would come out clearly.

**The Chair:** Thank you very much, Mayor Fratesi.

**Mr Fratesi:** Thank you for the opportunity.

**The Chair:** It is a very interesting and certainly very probing challenge for our committee.

**Mr Fratesi:** Hopefully the committee has not made its mind up and is going to listen to—

**Mr Daigeler:** There is a difference between the committee and the government.

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#### BOARD OF GOVERNORS OF EXHIBITION PLACE

**The Chair:** We now have a presentation from the municipality of Metropolitan Toronto, Mr John Sillers and Mr Peter Moore. Mr Moore is with Exhibition Place, is that correct?

**Mr Moore:** Yes, sir. I am Peter Moore. Thank you very much for the opportunity to appear here this morning. Our presentation will be very brief. I would like to point out quite early that the issue about which the board of

governors of Exhibition Place wishes to make its representation this morning deals with a procedural issue rather than the substance of the legislation which you are considering.

Specifically, what the board of governors of Exhibition Place is requesting is that an amendment be made to the legislation which allows a local board of an upper-tier municipality to make direct application to its council to allow shopping to take place on its premises.

There is a significant number of changes anticipated at Exhibition Place in Toronto, specifically on the east end of our grounds. We are currently reviewing and investigating the establishment of a trade centre on those grounds. We have received proposals for development on the west end of the grounds of Exhibition Place, primarily oriented towards greater use of our buildings and greater use of our land in the style of festivals and events similar to the style we have been having the past few years, such as the CHIN picnic, the Caribana festival, etc.

The nature of our application is that we are a local board of the municipality of Metropolitan Toronto; we are owned by the municipality of Metropolitan Toronto. We would like to be able to make direct application for exemption to the municipality of Metropolitan Toronto rather than making application to the city of Toronto, which would then make application on our behalf to Metro council, which in effect is our owner. To some degree we are seeking relief much in the form of a collection or an association of retailers who can make application directly to Metro council.

In conclusion, to reiterate, our request is that the legislation be amended procedurally to allow a local board constituted of an upper-tier municipal authority, to make direct application to that authority rather than through the lower tier.

**The Chair:** Thank you very much. Mr Sillers, do you have anything to add, sir?

**Mr Sillers:** Just to explain, Mr Chairman, I am a solicitor employed by Metropolitan Toronto. I am also the solicitor for the board of management. As Mr Moore has indicated, the request we are making here does not go to the substance, if you will, or intent of the legislation, but to the process. I think Mr Moore has covered it. The request is framed in a general manner in that it would relate to all upper-tier municipalities and their local boards.

If the committee should favour our request, I would be happy to assist in drafting any legislation. We did not put the request in the form to single out the board of management at Exhibition Place, rather to put it in the form of a general amendment. I think Mr Moore has covered all the other points.

**The Chair:** I am almost dumfounded with such a succinct request, Mr Sillers, because more typically our presentations are long perambulations and this is a very specific, very detailed request. I am sure you are open for questions on this particular thing, to elucidate it. Mr Daigeler.

**Mr Daigeler:** With regard to the specific request, legal counsel, I presume, will take that under advisement and when we look at clause-by-clause will inform us what

would be the implications of this. I think it probably would be useful if you phrase it in the form of an amendment so that we can properly discuss it when we come back in the middle of September to look at clause-by-clause.

However, I am a little bit disappointed, quite frankly—in fact, more than a little bit disappointed—that the municipality of Metropolitan Toronto, given the importance of it, would not have more to say on the legislation itself. Of course, when I saw Chairman Alan Tonks on the agenda I expected something substantive to come forward. I am just wondering whether you are prepared to give us something on that. I do not know whether you were here earlier when Mayor Fratesi spoke. We have had very strong opinions on both sides of the issue and obviously we are here to get not only the specific interests of a relatively particular concern, but the broad policy issues that are at stake here. I am just wondering, are you prepared to speak to that at all.

**Mr Sillers:** If I may, sir, I have no specific instruction from the Metropolitan Toronto council to speak to the broader issues that you have mentioned, but I can tell you that in June of this year a report went forward to council written by the Metro solicitor outlining generally, explaining, if you will, the amendments that you have before you. That report was merely received, so there was no specific instruction, apart from the point we are here addressing. There is no specific instruction from council, nor is there any recommendation or position on the legislation.

**Mr Daigeler:** You are not a politician and you are—

**Mr Sillers:** I am not a politician.

**Mr Daigeler:** Just, I guess, the solicitor. I do not want to phrase this pejoratively in any way. I do not think it would be fair for me to, as it were, put you on the spot and ask you how the whole thing has worked in the Metropolitan Toronto area, because I think to a fair degree it is a political question and not a legal one. So in the light of that, I think I have to pass on.

**Mr Sillers:** I can make one comment, if I may, Mr Chairman. Last June—by “last June” I mean of 1990—there was a report from the Metro task force on Sunday shopping, and one of the many recommendations that was approved by council in June of 1990 was to endorse the concept, if you will, of the common pause day. That is the position of Metro council, but that was in the context of the legislation as it stood at that time. It was not in response to the amendments that this committee is considering. So I really cannot take it beyond that, sir.

**Mr Daigeler:** I hear there is an effort under way to put something on the ballot. Is that by Metro council?

**Mr Sillers:** I can only say that I do not know any more about that than what I read in the newspaper.

**Mr Carr:** The lawyers who come before us are always the ones who stick strictly on the line, and I appreciate you have to do that. You cannot speak for the council.

However, going around the province we have heard very clearly from municipalities that they are going to take the tourism exemptions and take entire communities and open them up. We have heard that in Windsor, Sarnia, the Sault, some of the other places in this province.



Notwithstanding the fact the Premier of this province said there would be a common pause day, municipalities have said, "As we see this legislation, we can take the entire community and open up based on the tourism criteria that you have laid out." I know there has been some debate between the mayor and the chairman and the Premier that I have read about, as you have, in the paper; differences of opinion. But as a lawyer, strictly speaking, looking at this legislation, if the municipality of Toronto wants to open up, can it declare the entire Metropolitan Toronto area a tourist area and open up? I am saying that from a legal standpoint.

**Mr Sillers:** As you said, you promised—I am sorry, perhaps it was the former member—not to put me on the spot.

**Mr Carr:** That was just your legal opinion on the tourism exemptions.

**Mr Sillers:** I have the greatest respect for the legal opinion that the various ministries of the government get in this area. I can only say that perhaps there is some doubt as to the way in which the regulation is presently framed. I think it would be improper for me, as a solicitor for Metropolitan Toronto, to advise this committee as to how the courts might ultimately interpret the legislation that you have before you or how the municipalities may use or abuse it, if that is the purport of the question.

**Mr Carr:** I respect the fact that the opinion you give will be confidential to you—

**Mr Sillers:** Right. I may have an opinion, but I prefer not to give it because my mission—and I say it with respect, Mr Chairman, I am here primarily on behalf of the board of management of Exhibition Place. I would be quite prepared, to the extent that I can, to tell you the position that Metro council has taken with respect to this legislation historically, but I would certainly prefer not to give my legal opinion on the legislation and whether it might be used, abused or otherwise.

**The Chair:** Inasmuch as Mr Sillers has made that point on several occasions, perhaps we could—

**Mr Carr:** I do not mean to make it uncomfortable for you personally, but you can understand where we are coming from.

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**Mr Sillers:** I appreciate that.

**Mr Carr:** We do not want to do that. I appreciate that the recommendations you will make sometimes will be confidential, so that was not my intent. The problem we have, as you know, sitting back and watching this debate in the media between the Premier and the Metro people, is that we are the ones who have to make the recommendations, and you have a difference of opinion. Presumably, it is because the Premier says, "This is what I am getting, my legal opinion is you can open," and presumably Metro Toronto is saying, "This is the legal opinion we are getting." Some of the other communities, as we go around this province, are saying very clearly, "As we interpret these tourism exemptions, the ball is now in our court."

I guess ultimately it will not be the Premier or the chairman of Metro that will decide it. It will probably be the courts. I guess that is one of the concerns we have. Maybe you could comment on that aspect of it. Again, I am not trying to put you on the spot, but because of the difference of opinion on this, do you see this debate going to the courts? Will it be ultimately decided by the courts rather than elected officials, in your opinion?

**Mr Siller:** I would say yes. My answer to that question would be yes.

**Mr Carr:** Maybe you could just fill me in. I had assumed it was going to be the chairman who was coming today. I wondered why that had changed.

**Mr Sillers:** The Metro chairman?

**Mr Carr:** Yes. We had it listed as Chairman Alan Tonks from Metro coming in today. That is why you have to forgive us a little bit. I was expecting to come in and have the chairman here to be able to really debate it. I do not know if there is some clarification.

**Mr Sillers:** We are very sorry to disappoint you.

**Mr Daigeler:** On a point of order, Mr Chairman: It would be useful for the committee if perhaps the clerk could indicate to us what happened here, because we are really confused. I think the presentation here is on behalf of Exhibition Place whereas we expected a presentation on behalf of the Municipality of Metropolitan Toronto. So if the clerk would advise us as to what has happened here.

**The Chair:** I think all committee members are equally surprised.

**Clerk of the Committee:** Originally I think, and on the original agenda you have, it shows Alan Tonks as appearing, which was what I was informed from his office. The agenda you have today does not show him appearing because I was informed by his office about two days ago that there would be a change in presenters.

**Mr Carr:** —some of the opinion from the Chairman. We were hoping today to clarify some of the debate that has been going on between the two groups. Of course, the Chairman and Mr Rae have had a good chance to debate on many occasions. As a matter of fact, as I was reflecting today, if it had been a 700-vote difference in 1987, the Premier might not be sitting here today, so you will have to forgive us.

Just on those amendments then, if we could clarify that, with regard to what you would like to see, if this legislation remains the same, could not Exhibition Place, as an example, meet the criteria that were listed and be able to go to the municipality and say: "Here we are. These are the criteria. We meet them. We would like to stay open. We are a tourist area." Could that be done through the existing Bill 115?

**Mr Sillers:** As Mr Moore has indicated, and I apologize for not having had the brief submitted in advance so that you may have had a chance to look at it, as I read the legislation and the proposed regulation, to answer your question, no, the board could not go directly to the municipality that is going to grant the exemption. That is what we are asking; that is the very nature of the amendment we are

seeking which, as Mr Moore has indicated, does not go to the substance or the intent of the legislation but rather the process as to how it comes about meeting, of course, the criteria. Otherwise, of course, the exemption could not be given.

**Mr Morrow:** I really want to thank you for being here today. You have a fine place. I use it as often as I can. As a matter of fact, I am there this evening watching a concert. I do not really have any questions for you. I just want to thank you for being here. We will take this when we do clause-by-clause, and I hope the ministry will review this the best it can.

**Mr Kormos:** I do not think we will have to take it anywhere. There are so many Solicitor General and whip's people and bureaucrats in here today that I think they will take it right with them directly. Thank you very much. Good point.

**Mr Daigeler:** If I may be permitted, I guess you got the feeling already from us, at least from this side of the committee, that we were disappointed that no one from the political level from the Metro council came to speak to us on what is, after all, a pretty important issue. If you want to bring that back to the council you serve, I think I would like to mention this.

**Mr Carr:** It might be that one of the reasons Metro may not have—maybe you and the solicitor know this. As you know, councillors are not allowed to come and speak as individuals. They like to have the mandate. Is it because council has not had the chance to formulate something, in terms of a vote on what its position is?

**Mr Sillers:** The only response I can give to that, and perhaps I should have expanded: There was a report that went to council—I am sorry, I do not have the exact date; it was early—in response to the legislation you have before you. The council, that is, the political body, did not come to a conclusion on the legislation, or say yes, no or whatever. It may well be that the arrangements for this meeting with your committee were made in anticipation of such a position.

**The Chair:** Thank you very much, Mr Moore and Mr Sillers.

#### COMMITTEE FOR FAIR SHOPPING

**The Chair:** Our next presenter is Mr John Laskin from the Committee for Fair Shopping. I believe there will be a video portion of your presentation. We have approximately half an hour.

**Mr Laskin:** As the Chair has already indicated, my name is John Laskin. I am here today on behalf of the Committee for Fair Shopping. The committee is of course appreciative of this opportunity to appear before you to again outline its views on the issue of Sunday shopping, an issue that has occupied a great deal of time and resulted in the expenditure of a great deal of energy over the last few years.

I do understand that the committee has already heard on Tuesday and Wednesday of this week from National Grocers, one of the two members of the committee. The concerns and the frustrations which, as I understand it,

were reflected in the National Grocers' presentation are the very same concerns and frustrations which underlie the presentation that has been submitted in written form to this committee, as well as the presentation which you are about to see and hear on behalf of the Committee for Fair Shopping as a whole.

The Committee for Fair Shopping is also aware, of course, that members of this legislative committee have spent a great deal of time in public hearings around the province. You have, I hope, already had a chance to review the brief which the committee has submitted.

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What I propose to do, therefore, this morning is not to repeat what you already have in written form, but to begin the presentation with the playing of a five-minute video. The video is intended to highlight both the recent history of Sunday shopping and the problems with the existing act from the committee's perspective as well as the position of the Committee for Fair Shopping itself.

What I then propose to do after the playing of the video is to comment on one or two other aspects of the proposed legislation that are of concern to the committee. Then I would be pleased to respond to any questions that members of the committee might have.

[Video presentation]

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**Mr Laskin:** We have copies of the video available for members of the committee, should they wish. I understand they will be provided to the clerk of the committee.

The video refers to a number of the concerns that the Committee for Fair Shopping has. Others of those concerns are already addressed in our brief, and I will try not to repeat what is already set out there in writing.

There is one concern not expressed in the brief or in the video that I did want to address briefly. I understand it is one that others have made in presentations to the committee. It is this, that what in many ways are the guts of this legislation, the tourism criteria, are not to be spelled out in the legislation itself but rather to be left to be dealt with in regulations. Again, I will try not to repeat what others have no doubt urged on the members of this committee, but the tourism criteria are at the heart of the legislation. They are an attempt, it appears, to resolve what has been an important issue of public policy in this province for a great many years, and to leave them to be dealt with by regulation so that they can be implemented and changed without any guarantee of public scrutiny or debate is, I say with respect, contrary not only to our parliamentary traditions but contrary to good governmental practice today. The Committee for Fair Shopping's view certainly is that it is highly inappropriate.

There is one final matter I want to address, subject, of course, to any questions that members might have, which is not dealt with in our brief. It seems to me appropriate to provide the committee with an update on the status of the current legal challenges to the current act, in part because the legal challenge may well have a very important impact, not only on the act as it currently stands but also on the act



as it would be amended if these amendments were adopted as law.

As members of the committee will know, in legal proceedings in which the Committee for Fair Shopping was involved, an order was made last summer by the Supreme Court of Ontario striking down the current act. An appeal by the province was allowed and the act in effect restored by the Ontario Court of Appeal in a decision rendered in March. Members of the Committee for Fair Shopping have sought leave to appeal from that decision to the Supreme Court of Canada, and that application is pending. So the legal issues concerning the validity of the current act, which may well have an important bearing on the validity of the act as it would be amended, are very much live legal issues.

It is important, in the view of the Committee for Fair Shopping, that members of this committee be aware of that fact and be aware of the current position, which is that the legal validity of the current law is still a very much unsettled question. When the Supreme Court of Canada will decide the application for leave to appeal remains uncertain. That timetable is up to the court.

That concludes the presentation that I have to make this morning, Mr Chair, subject to questions from members of the committee.

**Mr Daigeler:** Thank you for appearing before us. First of all, let me be clear: What is the difference between your committee and the National Grocers?

**Mr Laskin:** National Grocers is, in effect, one of the members of the Committee for Fair Shopping. The Committee for Fair Shopping also now includes the Oshawa Group Ltd.

**Mr Daigeler:** That is the only other partner in it?

**Mr Laskin:** Currently, that is the case, yes.

**Mr Daigeler:** National Grocers was quite clear in its presentation yesterday in Hamilton and the day before in London that it really feels that basically stores should be closed on Sundays. If it has to be open, then there ought to be fairness, but their clear preference was to be closed. You are not saying this here. What is your own proposal for the legislation? Should there be no legislation at all and business should decide on its own or should there be some legislation?

**Mr Laskin:** As I hope the brief has made clear, what we attempted to do, on behalf of both members of the committee, is express some pretty serious concerns, the same concerns as I mentioned earlier, that National Grocers may have expressed on its own the other day. We have not proposed a road map for new legislation; we have not gotten into the drafting process. But the concerns are those that emerge from the current law and from these amendments, and those are concerns about fairness, about a level playing field. Those are the concerns we wish to bring to this committee's attention in as clear a way as we could.

**Mr Daigeler:** You feel there should be legislation? Many people have appeared and said there should not be any legislation, leave it up to the marketplace.

**Mr Laskin:** I am perhaps repeating myself, just to say that if there is to be legislation, these are the concerns that ought to be reflected in it.

**Mr Daigeler:** In other words, you are not taking a stand on that question. You just want to say if there is legislation, then it ought to be fair, which is a position.

**Mr Laskin:** Yes.

**Mr Daigeler:** I am a little bit surprised to hear, actually, that under the current municipal option—that is what you are referring to in your video that there should be this kind of unevenness. Most of the people who have come to us said it is really working quite well. In fact, Mayor Fratesi just this morning said if it is not broken—and he said it is not broken—do not fix it, leave it the way it is. If a municipality or a region wants to stay open, fine; if not, let them be closed. You are actually the first one who is saying that from a business perspective it is not working. Why are you saying that?

**Mr Laskin:** The situation described in the video results from a combination of features of the current legislation. It results from not only the municipal option but also the patchwork of exemptions for pharmacies, for convenience stores, for fruit markets, that sort of thing. What that results in when combined with the municipal option is the problem that the video is an attempt to depict. That is, for stores selling similar goods, some can be open, some cannot be open. Some are on one side of the street, they can be open; those on the other side of the street cannot. It is really a combination of the municipal option plus the variety of other exemptions that the legislation includes.

**Mr Daigeler:** Have your partners been involved at all in approaching city councils or regional councils to declare that particular area open?

**Mr Laskin:** There have been attempts, yes.

**Mr Daigeler:** Could you indicate where that was and how successful that was, whether that worked or did not work, what the difficulties were.

**Mr Laskin:** There were representations, as I recall, and I do not have a recall of all of them, but I can certainly recall representations made to Peel, to York region, I believe to Niagara as well.

**Mr Daigeler:** For general opening?

**Mr Laskin:** For exemptions, for openings that would at least deal with the kinds of problems that are illustrated in the video. Those requests were not favourably received by the municipalities. The period I am referring to and that I am aware of is the period just about the time the legal challenges were also taking place, so they date back more than a year now.

**Mr Carr:** Just so you know, we have gone around the province, and what a lot of municipalities have said is they are going to take tourism exemptions and open up. We have heard from Windsor, Sarnia, Thunder Bay, the Sault, Kenora. They said, based on the tourism exemptions, "Thank you very much, Mr Premier, notwithstanding your statement about a common pause day, we are going to take these exemptions, and we are going to be open, and there isn't anything you can do about it."

I agree with you on the regulations, that by putting in the regulations they can be changed at a later date. In fact, that is how we got the elimination of the oath to the Queen; it was put in the regulations, nobody knew about it, no debate, wham, it is gone. But what some of the groups have said is that because it comes down to the tourism criteria we should get a group of stakeholders, union, business, everybody related to this, the tourism people, and they should sit down and be able to hammer out the criteria. I suspect that is what the government will do. They will say that because of the fact we are not going to be able to have the common pause day, and two years from now people are going to be able to say, "You made this promise, but we are now shopping." I think that is what will happen. They will get the groups together, the unions, the various groups that I have mentioned. Do you favour that type of co-operation, where all the groups involved get together and try to hammer out the regulations with the tourism exemptions?

**Mr Laskin:** I guess what I have to say is that is not an issue on which the Committee for Fair Shopping as a committee has a view. I would say this, though, that having stakeholders involved does not necessarily deal with the problem of its being in the regulations, that is, no matter how the definition is arrived at, it ought to be available for public debate through the legislative process.

**Mr Carr:** I agree. The other area of concern, as you know, is the square footage. People have said that because you have left it up to municipalities, there will be a tremendous amount of court challenges because people will say, "Windsor opened; it is no different from my community, but my municipality decided not to open, therefore it is unfair." As a result, the people have said, what we are going to see is a checkerboard in this province, and we are going to have a certain percentage open, a certain percentage of municipalities that will not, for whatever reason, not based on tourism criteria but because the municipality for whatever reason said it did not want to open. As a result, they say there will be unfairness and court challenges. If that happens, will your group be taking legal action on this particular issue, on the issue of fairness about one municipality opening and the other not?

**Mr Laskin:** I think it is really premature for me to answer that question.

**Mr Carr:** You better start thinking, because that is what is going to happen.

**Mr Laskin:** So much turns on just how it evolves, and I think the members of the committee will have to reserve their options to take whatever legal challenges seem appropriate. But it is really premature for me to answer that now.

**Mr Carr:** Thank you. Al has a quick question.

**Mr McLean:** I have one last question from our side. On page 5, under the "Rights of Retail Workers," I believe your concern with that is covered in Bill 70, the labour bill that was dealt with here last week in clause-by-clause. The concerns you have with that are contained within that.

We had a lot of discussion—I have not had the opportunity to be on the committee full-time but part-time—as I

hear, last fall about the common pause day. Every time we stopped, common pause day was going to be established in Ontario. Do you believe the Premier lied to the people of the province last fall?

**Mr Laskin:** I do not think I can really answer that question. I am not sure it is appropriate for me on behalf of the Committee for Fair Shopping to answer that question. With respect to the rights of retail workers, though, what I can say is this, that the concern you have highlighted in the brief on page 5 is really a concern that the current legislation drives employment towards less-protected, smaller operations, and that there is nothing in these amendments that would cure that problem in the current act.

**Mr Carr:** As you know, National Grocers got together with the United Food and Commercial Workers and made a presentation. The only area where they disagreed, I think—and somebody can correct me if I am wrong, and I made this point yesterday—was on the square footage. They said: "We need to stay open, but we would like to stay closed. But if we are going to be fair, we don't need to have restrictions because somebody under 7,500 will open."

You talked about fairness. What are your thoughts? Would you like to see 7,500 square feet? Because as you know, what will have to happen is that you will have to go to the municipality separately if you have stores bigger than that. Would you like to see that part of the legislation taken out, the square footage portion?

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**Mr Laskin:** I did not have an opportunity to hear the nature of the disagreement to which you have referred. I do not believe that is an issue that the Committee for Fair Shopping has addressed so I am unfortunately not in a position to respond.

**Mr Carr:** You cannot speak on it?

**Mr Laskin:** No, I cannot.

**Mr Kormos:** I have some concerns about municipal option. It seems virtually every group that has appeared before us other than the few exceptions, when asked if they had their druthers, have indicated that municipal option is not the course they would like to see taken because of the frailties in that design that you speak of. What would you envision as the appropriate body or process if there were an option to municipal option, where in fact the province had uniform application of guidelines or regulations? What type of body would you envision doing that at a provincial level?

**Mr Laskin:** Again, I have to say that the Committee for Fair Shopping's concern is with what has emerged from the municipal option, and with the essential problems which it sees this proposed legislation leaving undisturbed or complicating. The Committee for Fair Shopping has not itself gone beyond that into a drafting process to point out alternatives. No doubt this committee has heard and is considering other alternatives, but our task today is simply to convey the concern about the current operation of the municipal option and what we see would result from these amendments.



**Mr Kormos:** I appreciate that. Just briefly before Mr Fletcher talks to you, there is a phenomenon of drugstore supermarkets—interesting retail businesses. Some have suggested that they have designed their structure to circumvent the law. Some people have said that. What do you say to that phenomenon of drugstore supermarket?

**Mr Laskin:** The phenomenon is one of the aspects of the problems of fairness that we have identified. I really cannot speak to what has motivated the companies that operate drugstore supermarkets as to how they have designed their operations and what lies behind it, but it is certainly part of the problem with fairness that we see.

**Mr Kormos:** And the governmental response should be? Make a recommendation.

**Mr Carr:** Come on. Go out on a limb.

**Mr Laskin:** On behalf the committee, I cannot propose a specific response other than that the problem has to be dealt with by you gentlemen.

**Mr Kormos:** Everybody in this room is reading your mind right now; we know.

**Mr Laskin:** That is probably a fruitless exercise.

**Mr Fletcher:** On the matter of enforcement, you quoted from the police department that the law is difficult to enforce. Yesterday in Hamilton and the other day in London the UFCW and National Grocers came together with a unified presentation; it just blew me away that the two groups that represent the largest number of workers would do that. They came together and both said that as far as enforcement is concerned, a fine for the first offence should be around \$10,000 and the second offence \$20,000. Would that be a deterrent? If you were a retail owner paying out that first \$10,000, would that act as a deterrent? Or do the enforcement problems arise in that the officers have to go to the stores?

**Mr Laskin:** The enforcement problem that has been referred to in our presentation is the problem, again illustrated by the video, of stores without exemption simply opening.

**Mr Fletcher:** Yes, I saw Mr Kormos buying a ham, and I was worried about that.

**Mr Laskin:** And charges not being laid, let alone being pursued to the point of conviction. The Metro police expressed some of their reasons why that results. It results, in part, from the very nature of the law and the manner in which the law has been written and would still be written, we say, under these proposed amendments. Whether a particular level of fine would amount to a deterrent, I am not sure there is a magic number, but again that is not a point on which this committee, the Committee for Fair Shopping, in any event has a definite view.

**Mr Fletcher:** I am going back to National Grocers and UFCW; the two people who were part of the presentation are here. They were saying also, why not have a committee of stakeholders set up—it goes along with what Mr Carr was talking about—and get people from the unions, the retail people and also municipal governments, and set some real, viable tourist criteria for the province. Your response to that was a little hazy. National Grocers is also

saying that as far as it is concerned, that could create a form of level playing field. They are a little worried about it still.

**Mr Laskin:** I did not intend my response to be hazy. What I intended it to say was that as a member of the—

**Mr Fletcher:** Maybe it was the question that was hazy and you just answered it hazily.

**Mr Laskin:** I appreciate that there are a number of issues that this committee is considering that our committee may not have come to grips with as a committee and may not be in a position to assist on, but this is one on which the Committee for Fair Shopping has not formed a view. I do understand what submissions were made by National Grocers and others on the point.

**Mr O'Connor:** I realize that the Committee for Fair Shopping has been active in this and has been following us quite regularly as we proceed with these hearings. When the legislation was introduced it was something we were very committed to because last September we said we were looking for a common pause day. When the whole thing has gone out for public hearings, we have added the regulations so that we can try to get some input into the regulations. I agree with you they should not be part of the legislation, but in all fairness I think they should be open for discussion as we travel the province, and that is something we have done.

The UFCW—which has been alluded to and spoken about quite a bit here—and National Grocers, which is part of your committee, support the common pause day portion of the legislation and support for the worker. We are glad about that. Does your committee have anything it would like to say about store size that could help us perhaps in the regulations, the tourist criteria? Store sizes and your views, please.

**Mr Laskin:** I do not really think I can add any specific comments with respect to store size. The store size feature of the current legislation has certainly produced part of the unfairness about which we are very concerned, but I think that is as far as I can go with dealing with that specific aspect of ensuring there is a level playing field.

**Mr O'Connor:** So you are concerned about that. One thing that was proposed by the mayor of London and many other people who came before us was taking a look at the tourist criteria in bringing together a committee of stakeholders so we can maybe take a look at that whole issue. Do you feel that could be a viable way of taking a look at this before we get any further into it?

**Mr Laskin:** As I mentioned in response to an earlier question, the Committee for Fair Shopping does not have a committee view on the stakeholders idea. There are no doubt a number of ways of ensuring that if there is to be a law it is going to be a fair law. Listening to people who are affected is certainly a potential one, but beyond that we do not have a committee view on that solution.

**Mr O'Connor:** Thank you and thank you for sticking with us.

1040

**Mr Daigeler:** Mr Chairman, while we are waiting for the next presenters, just so that we have the parliamentary assistant working hard for us, we got an answer from Janet Scarfone in response to the question asked by my colleague regarding the definition of "common pause day." The answer states, "The legislation achieves the purpose of ensuring a common pause day by requiring most retail stores to close on enumerated holidays." Is there any provision in the legislation at the present time that requires most retail stores to close?

**The Chair:** I believe that is a question for you, Mr Mills.

**Mr Mills:** I think in fairness to the legal adviser, who is not sitting here just at this moment, we should wait and get her answer to it, since she wrote the answer to the question that you posed. It would be not quite correct for me to comment on a legal opinion, but I am sure she would be glad to answer it when she comes back.

**The Chair:** Perhaps you could request that she do so as soon as she is able to get a note of the question.

The clerk has distributed responses from the Ministry of Tourism and Recreation and the Ministry of the Solicitor General, four questions that were posed and also a very thick file of written responses.

#### THRIFTYS

**The Chair:** Our next presenters are Mickey Maklin and Louise Lecours from Thriftys. We have approximately half an hour.

**Mr Maklin:** My name is Mickey Maklin. I am the senior vice-president and general manager of Thriftys. Louise Lecours is our manager of human resources. Louise and I have chosen to appear before this committee today to discuss with you some of the major issues facing Ontario's retail industry and to provide input on Bill 115.

I would like to start by telling you a little bit about Thriftys. Thriftys was founded right here in Toronto in 1942. Its first store was located at the corner of Queen and Church. In the 1960s, when the denim blue jean first became popular in the United States, Thriftys was one of the first retailers to import them into Ontario. Since then, our reputation has been built on the success of the blue jeans industry.

Thriftys is also a major employer of young men and women in Ontario. In this province, Thriftys employs over 550 people at its 57 stores, and over 75% of our employees are women. In addition, the average age of our employees is about 19 years old and the average age of our store managers is about 25 years old.

Some men and women still come to shop at Thriftys for just jeans, but now more Ontarians of all ages come to Thriftys for full casual dress. Today, Thriftys caters to families interested in casual and leisure wear fashions from top manufacturers of jeans, corduroys, blouses, shirts, sweaters, jackets and accessories. If there was such a person as an average Ontarian, I believe that he or she would be wearing clothes purchased at Thriftys.

I want you to know I believe it is laudable that the Ontario government has provided the people of Ontario with a forum to let our views and concerns be known. I understand this committee has spoken to a great many Ontarians over the last month as it travelled across the province hearing submissions concerning the proposed amendments to the Retail Business Holidays Act. I also realize this is your last day of hearings. I hope you are all not too tired to listen to one more presentation before you take a collective common pause from these hearings.

I realize that the communication process works two ways. What are the messages that the business community has received from the Ontario government? We have heard Solicitor General Pilkey say that this government wants to work in partnership with business. We have heard Premier Rae say that this government is interested in consulting with the business community. We have also heard Premier Rae say that this government could either bicker with business interests over the coming years or we could face the external challenges together.

Sunday shopping is one of those issues which we Ontarians have been inwardly looking at and bickering about for the past 15 years. Since the debate has begun, the Berlin Wall has fallen, trade barriers with the United States have opened up, Europe has joined as one community and the Soviet government has fallen and risen again. And that has just been over the last few years. Is it not time that we Ontarians solved the Sunday shopping issue to everyone's satisfaction?

Now let's look at the competing interests involved. On one hand, it has been made clear to the business community that this government is committed to a common pause day so that people can spend time with their families. On the other hand, it has been made clear to this committee that the retail industry in Ontario is seriously threatened by such factors as cross-border shopping, the growing arrival of US competition and high taxation from all levels of government. It is also clear that a sizeable percentage of Ontarians wants to shop on Sundays. The long lineups at the borders to Buffalo attest to that fact.

Most members of the retail business community have let it be known that by allowing our stores to open on Sundays, it would provide a grain of sorely needed support and relief. How do I know this? I would now like to tell you about Thriftys' experience with Sunday shopping for the brief period during the past year when the practice was condoned by our Ontario courts.

During the period that our stores were legally open, our sales on Sunday accounted for about 18% of our weekly sales. Overall, Thriftys' weekly sales rose by an average of 2.6% during the time that we had Sunday shopping. This rise is especially remarkable in light of the fact that it occurred during the worst part of Ontario's recession.

In addition, during the time Sunday shopping was permissible in Ontario, we opened our stores only between the hours of 12 noon and 5 pm. Although Thriftys' full-time staff and management staff worked only five-hour shifts on these Sundays, they were paid for eight hours. All of our employees worked on a voluntary basis on Sundays. Thriftys actually hired part-time staff just for Sundays. The



full-time staff that worked on Sunday also received one Saturday off per month and were not scheduled to work both the Saturday and the Sunday.

I believe that Thriftys' experience demonstrably shows that a retail business can be trusted to treat its employees fairly and favourably if Sunday shopping is permitted. Further, I will state unequivocally that Thriftys fully supports the provisions of the Employment Standards Act providing employees with the absolute right to refuse to work on Sundays if that is their choice, providing that we receive at least 48 hours of notice in advance of the event that they refuse to work.

There is some other information about our experience with Sunday shopping that I would like to share with you. We have heard that the issue of Sunday shopping is completely separate from cross-border shopping. Our experience with Sunday shopping has turned up some interesting revelations. We monitored sales on a daily basis, and for the brief time that Sunday shopping was allowed in Ontario, we found that business increased only marginally in our stores adjacent to the United States border. However, sales at Thriftys stores in areas that were not merely within a few kilometres of the border rose markedly when Sunday shopping was not restricted.

Now, why would Sunday shopping force residents of Toronto or Hamilton to stay in Ontario, but not those people living in border communities? The most plausible explanation for this anomaly is that Ontario residents on the border have already become accustomed to shopping in the United States on Sunday. They have been doing it for years. People who live in border communities know that they can simply jump into their cars and in a matter of minutes could be spending their valuable Canadian dollars on inexpensive bargains in Niagara Falls, Detroit or Buffalo.

It seems that Sunday shopping made the biggest difference for Ontarians living far enough from the United States border that they would rather stay in their own Ontario communities, and pay higher prices, perhaps, than spend the time and money needed to drive to the United States.

I can give you an example of how Ontarians pay more than their American counterparts. The August edition of Canadian Business magazine gave an example of how a Canadian resident could simply get a copy of a US mail-order catalogue, and: "choose a pair of jeans in the style and size you want and place an order on a toll-free line that operates seven days a week, 24 hours a day. A pair of high-quality men's jeans in L. L. Bean's summer catalogue cost US \$22 or about \$25 Canadian. A similar pair of jeans in Canada would sell for \$45 or more." For a Canadian retailer that sells blue jeans, this type of news is very disconcerting. In short, it is difficult to compete with cross-border shopping when American retailers are selling merchandise for a price which is less than the wholesale cost in Canada.

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Now that I have given you a brief overview of some of the issues facing Thriftys, I would like to recommend an amendment to Bill 115 to deal with the realities facing the retail industry. I recommend that if there is to be a com-

mon pause day in Ontario, retail stores be allowed to remain open from the Sunday prior to Thanksgiving until the end of the year.

I believe that by allowing stores to remain open on Sundays during this time period, it would allow Ontarians to shop at home for the holiday season, rather than migrating to retail stores across the border. It would maintain the sanctity of the common pause day, with a short recess during the busiest time for shoppers to buy goods for their holiday season. It would provide needed help to the business community and would tangibly show that this government is listening to business.

In conclusion, I am presenting an amendment to Bill 115 that provides a compromise that allows only a few months of Sunday shopping. The common pause day will be left unharmed for the remainder of the year. If this government does indeed want to show that it is not disregarding the business community, to amend Bill 115 so that Sunday shopping is permitted between the Sunday prior to Thanksgiving Day until the end of the year would be a good first step which will satisfy the concerns of the greatest number of Ontarians. I thank you.

**Mr Daigeler:** Thank you for what I think is a very well-prepared and well-researched presentation, and also for coming forward with a new idea. After some four weeks of hearings, it is rather rare to get something that we had not heard of before. So you should be congratulated on that as well. What I am referring to is, of course, this idea of allowing stores to be open a certain time period before Christmas. That is a very interesting idea.

I know that in Germany, for example, where they are very strict with regard to their Sunday closings—in fact, Saturday closings as well—they do have that provision. They do have the Sundays before Christmas, at least four Sundays, open. Apparently they do a lot of business then. So I think that is certainly something that is very worth while to look at, and I am just wondering whether the government will be open to consider this. We will certainly put that forward when we are looking at the amendments that will be presented in some two weeks.

You said that you certainly support the right of the workers to not work on Sunday. You specifically indicated that when you were open on Sundays, you made sure that your workers were able to choose. There has been one argument put forward by the unions, which I think is quite a good one: "Okay, there may be workers out there who want to work on Sundays, but it is basically just part-time. What you are creating here in terms of new jobs is really not full-time with full benefits and everything else, but just part-time with very low benefits. Therefore, you are not really doing a great benefit to the economy." I am just wondering whether you would have any reaction to this argument?

**Mr Maklin:** Actually, au contraire, as they say. First of all, let me state that, during the brief period of Sunday shopping in Ontario, at no time on any one of the Sundays did all of our stores open. We have never had the full number open, due to certain employees saying they could not make it that Sunday, and we did not open the stores.

We also added approximately 44,000 hours of labour during the months that Sunday shopping was there. That is equivalent to 20 new employees, equivalent full-time employees. Most of these employees actually approached us during the Sunday shopping.

As I said in my presentation, our employees are between the ages of 19 and 30 years on average. Most of them who worked the Sunday and evenings are university students who find it difficult to get employment based on their personal schedules. Retail allows them and affords them this opportunity, so they can stay in university or do their studies or add to their income, whatever it may be at the time. I think it is a major contribution to the people of this province.

**Mr Daigeler:** We have also had retail store managers, as employees, who said: "Okay, perhaps for the employees it will be fine. They can choose. But in the end, if I cannot find an employee, I, as the manager, have to fill in." What has been the experience with the managers of your stores?

**Mr Maklin:** Not once did we have that complaint to us. I can recall on one occasion, two occasions actually, when the manager was scheduled to work on Saturday, which is normally the busiest day in the retail industry on the weekly cycle. On one occasion, the staff that was scheduled to come in on Sunday could not, for whatever reason, and the store did not open. On the other occasion, the manager actually volunteered to get his assistant manager, who did not work the previous Saturday, to show up. Their income and their opportunity for additional income is based on sales, it is based on customer service, and they look for that opportunity to work and generate more sales.

**Mr Cleary:** You mentioned the long lineups at Buffalo. I can assure you there are long lineups in many areas. I come from the eastern part of the province and it is very difficult to get across and back to a new mall in Massena. But you also say that you support this amendment to Bill 115. You also said that when the former law was in place, and you were open on Sundays for four or five hours, that your business was up. Would you prefer your amendment to the former law, the option that was in place before?

**Mr Maklin:** It is certainly preferable to not being open at all, so I would prefer that. I would prefer less legislation on hours. As a country and as a world, we are going to globalization. Free trade will probably take place with Mexico. We have to be forced to be more competitive in certain industries. Other industries will fall by the wayside. Perhaps we should not have our hands tied on how to be competitive in the world of retailing or manufacturing, or in fact for most businesses. But, yes, I would prefer to go back to the 12 to 5.

1100

**Mr Carr:** The question I had was to your manager of human resources because, as you know, the government has said the reason it brought in this legislation was to have a common pause day for workers. You may be aware of what some of the municipalities have said as we have gone across, that they are going to take the tourism exemption and they are going to be open if the law is not changed. How have you handled it in the past, and how do

you intend to handle it in those communities that will be open, the situation of having to force people to work on Sundays? You mentioned, "We do not open, we do not close." I suspect that in the long term you are going to have to come up with a little bit better strategy than that, and I was wondering if you have been able to formulate. By all means, either can answer this. What do you see as your strategy to handle the workers?

**Ms Lecours:** In terms of the present bill, the way I understand it, we cannot force employees to work. So our strategies would be to continue with that and, as Mr Maklin stated, if employees refused to work we would not open the store, as we have done throughout the period where Sunday shopping was available last year.

**Mr Carr:** One of the concerns is that you will get some new workers who will come in and force old workers out. You said, I believe, that there were 44,000 new hours created. The feeling has been that they take hours away from other employees who do not want to work. If Sunday shopping was allowed, would there be extra hours and how would it affect those who say, "I am sorry, I do not want to work on Sunday"? Would they lose out in hours or be shifted or whatever?

**Ms Lecours:** I would have to say, from an employee relations standpoint, that would not be our approach with our employees. If it is their right to refuse, we certainly would not be looking to punish them or discipline them in that way by removing man-hours from them. With 60% to 75%, representing part-time staff, now interested in working Sundays, I do not believe we would have that problem, to be honest with you.

**Mr Maklin:** We currently have 42 stores in the west that are open seven days a week. Sunday is still a voluntary day in the west. When people are hired, whether part-time, full-time, temporary help, on our application we ask them how many hours a week they would be willing to work, whether from 4, 8, 12, or 16.

**Mr Carr:** Not Sunday, but how many hours?

**Mr Maklin:** How many hours, and whether they want to work on Sunday, because in the west it is a regular retail day from 12 until 5.

**Mr Carr:** My other question is along the same lines. We heard going way back in this very room from some of the small retailer operators, and I believe it was the Beaches, that said they are the same way: They do not force people to work; they have long lists. I think she said she had about 200 people.

**Ms Lecours:** People who are willing?

**Mr Carr:** People who are willing to work on Sundays, and if they go through and one person says he is not, there are plenty of people who are. What has been your experience? Maybe you could just comment, in light of the tough economic situation. Do you see it always being that way, that there are a lot of people who want to work? Or is it only because now, when things are a little bit tight for jobs, but it might evaporate? How do you see that? Are there enough people who want to work?



**Ms Lecours:** From my experience, having worked for two retailers within the period when Sunday shopping was allowed, I have to state quite honestly that I did not come across any problems with employees not wanting to work. With Thriftys specifically, we have a hotline—we call it a support line—and employees can call in. We have an open-door policy. We have, I think, some wonderful employee relations policies that our employees do regularly exercise. I am at the receiving end of those supports and I have not heard of one complaint from an employee working Sunday. In fact, to answer your question, we have so many university students who are willing to work I do not see it as a problem.

**Mr Carr:** One of the concerns is for skilled workers. Sometimes you can get people to serve people in the clothing industry because you can get university people and there is not as much training. For example, some of the United Food and Commercial Workers said that when it comes to their business you have butchers that are highly skilled. Maybe you could just comment on the skill levels, how you train somebody new. Is that the reason you can get people, because there is not as much skilled, or is there a lot? I do not know this, having never worked there. Is it a lot of skill you need and training you do for your employees?

**Ms Lecours:** No, I would have to agree with you, there probably is less skill required than that of a butcher. However, as Mr Maklin has already stated, the large majority of our employees is made up of the university students who are willing to work. The fact that the work is in a fun fashion environment that they enjoy I believe is probably why we have so many people willing to work for us, and less required skills.

**Mr O'Connor:** Thank you for coming. We are fast approaching the 300 mark on briefs presented and you found something new to put in for us to consider, and I congratulate you on that again. As you talked about increased jobs, you talked about increased part-time jobs, and I have some concern over that when I witness on the news a national strike by the postal workers and we have a corporation helicoptering in workers because of the part-time issue.

I think our economy needs more full-time jobs, not more part-time jobs. I have some concern over that. You have increased hours, but we had a presentation by National Grocers who said it merely rescheduled hours: "We never actually created any more jobs, we just rescheduled them." You have increased some jobs and I guess you must have worked that out really well with your employees, so I guess you need some congratulations on that.

British Columbia has had wide-open Sunday shopping for some time now, and this recession and the imposition of the new GST seem to have exacerbated the problem of cross-border shopping. Do you have stores in British Columbia?

**Mr Maklin:** Yes.

**Mr O'Connor:** Has your experience been increased or decreased sales in British Columbia during the period from January until now?

**Mr Maklin:** Actually, at this time British Columbia is the strongest province across Canada from a retail point of view for Thriftys. We are up 17%.

**Mr O'Connor:** Terrific. It seems to be decreasing, so you must have terrific marketing.

We are really looking at the tourist criteria here because we are committed to a common pause day. Do you feel tourists are perhaps the people who would be coming to shop in your stores if you were allowed Sunday store opening?

**Mr Maklin:** No. We really are not the type of retail outlet designed for tourists; we are an everyday distributor of casual wear clothing. The tourists who come here, certainly if they are from the United States—the product price points are lower in the United States than here right now. Labels are identical to some of the products they can find in the United States. Should they be walking through the Eaton Centre or where we have a location that is predominantly a high-tourist area, yes, undoubtedly there will be some shopping from tourists, but we do not rely on the tourist trade.

**Mr O'Connor:** I am glad you support the provision for the employment standards. Where do you think the new money you got during wide-open Sunday shopping came from? Was it market share or was it new money?

**Mr Maklin:** I think it was a little of both. There are a lot of people who find it a lot more convenient to shop on Sunday. First of all, our stores cater to a broad age group, from young teens all the way up to 35-plus. The parents do not always have the time during the week to shop with their teenagers to choose clothing, and we found a higher portion of families shopping in our stores than during the week.

**The Chair:** Thank you very much, Mr Maklin and Ms Lecours, for a very interesting presentation.

1110

#### CANADIAN FEDERATION OF INDEPENDENT BUSINESS

**The Chair:** Our next presentation is from the Canadian Federation of Independent Business. Ms Ganong, you are quite experienced in these endeavours. In fact, I believe you appeared on Bill 17 before—

**Ms Ganong:** We are always here.

**The Chair:** So you are familiar not only with making these presentations but even with this very committee. Please feel free to start when you are ready. And of course there will be many questions the committee members will have for you.

**Ms Ganong:** Mr Chairman, we are starting a bit late. Can you tell me how much time we actually have?

**The Chair:** Half an hour.

**Ms Ganong:** Great, thanks. We do not have a brief this time, we have something even briefer; a statement which I will basically read into the record and intersperse with a few comments as we go.

The Canadian Federation of Independent Business is a non-partisan political action organization representing some 88,000 small- and medium-sized independent Canadian-owned and -operated businesses across Canada. We have

nearly 40,000 members in Ontario and they come from all sectors and industries in the province. They represent a variety of firm sizes and ages. About one third of them are located in rural areas, one third in smaller urban centres and one third in big metropolitan areas. CFIB data reflect the concerns not only of CFIB members but of Ontario's independent business community as a whole. About one of every eight Ontario small firms is a CFIB member, and retailers constitute some 25% to 30% of our Ontario membership.

Besides highlighting some of the concerns we see the proposed bill posing for small retailers, we want to share with you our latest research results on a variety of issues relating to the Sunday shopping issues, taken from a recent survey of a sample of about 500 retail members in every region of Ontario.

Before I get into the recent research, I would just like to give you a little background. Historically, our members have been split on the Sunday opening issue, as I am sure have the witnesses who have been appearing before you throughout the course of these hearings. We asked our members nationally in 1988 whether they favoured the then municipal option of regulating Sunday shopping which was being presented by the Liberal government at that time, and 55% were opposed to it, a bare majority. We think it was because they were afraid of the domino affect, that if you let municipalities govern it would just create pressure for Sunday openings everywhere. So there was a slight majority at that time favouring Sunday closings. That was a bit of a weakening of opposition to Sunday closings from our previous mandate vote of 1983 where 58% were opposed to it.

There has been a half-and-half split and the opposition has been getting a little weaker as time goes on. We do not have national results on a mandate question to bring before you today. What we have is some research that we did with a sample of our Ontario retail members. We have also noticed that there tends to be a little bit of an urban/rural split, that retailers in urban centres closer to the border are perhaps a little bit more in favour of Sunday openings than the ones in the more far-flung reaches of the province. And also the retailers themselves tend to be coming down more on the side of Sunday closing than are other members who are consumers just like the rest of us and see the convenience of Sunday shopping.

We really have a very split vote. We cannot take a strong position on one side or the other before you today, we can just give you what we found. We asked our retail members a number of questions in relation to the Sunday-shopping issue, and of the ones who came down on the side of being opposed to Sunday opening, over half said the main reason for their opposition was that Sunday was a day of rest. For a small retailer who has perhaps four employees in his or her store, Sunday opening means working seven days a week, and wanting a day of rest is the major reason those retailers would want Sunday closings. Only about a quarter felt the common pause day aspect was important.

Another 15% wanted Sunday closings for commercial reasons. They felt there was insufficient demand on Sundays to warrant their stores being open. They felt that the

costs were not justified or that they were at a disadvantage being open on Sundays vis-à-vis large firms, that large firms would benefit more from being open Sundays. However, the vast majority of those members opposed to Sunday openings do not favour a completely shut-down Sunday. Most feel that certain kinds of stores should be allowed to stay open regardless. Notably, tourist attractions: 87% of members opposed to Sunday openings still favour openings of tourist attractions; convenience stores, 88% are in favour; and drugstores, 71% are in favour. The vote is split on whether all stores in designated tourist areas should be allowed to remain open. There is no majority there. It is really very split, with a very large undecided component of about 13%. The vote is also split with regard to bookstore and news-stands being allowed to remain open: Just over 50% would want them to be closed; still, over a third favours them being open and, again, a very substantial undecided vote.

There was no majority position that emerged on the effects that staying closed would have on members if Sunday closings were the rule except for the restaurant members, who were very sharp in their divergence from the other segments by saying that they were much more likely to experience lost sales opportunities, dissatisfied employees, dissatisfied customers if they were forced to close on Sundays. We were trying to get at what would happen to them economically if Sunday closings were the rule and they stayed closed.

Members were virtually unanimous on the importance of choice: 97% of the members surveyed said that all businesses, including tenants of shopping malls, should have the option to stay closed on Sunday if they choose, even if Sunday shopping is permitted. That is an important issue, particularly for the tenants of malls. When the law was struck down earlier and Sunday openings basically became permitted, small stores in malls were not always given the freedom of choice to stay closed if they wanted to. The mall owner said, "You agreed to be open when the mall is open. We're going to open the mall on Sunday. You have to be open too," whether or not it benefited them. That freedom of choice is extremely important to our members. So if a group of stores applied for the tourist exemption and were granted it, any stores that were within that area would still have the freedom to be closed if they wanted to.

No clear consensus emerged on the effect that staying open on Sundays would have on members if Sunday openings were permitted. Again, this lack of consensus undoubtedly reflects the variety of situations within which small retailers find themselves. Just over half are clear that Sunday openings would mean longer hours. That is just obviously true. However, the number of members who feel that Sunday openings would represent a loss in revenues and profits to them are just about in balance with those members who think that it would represent a gain. It is pretty evenly split. Again, the restaurant segment is strikingly more likely to see the benefits of being open on Sundays than other segments of the industry.

There is no doubt that the cross-border shopping issue does have an impact on the Sunday shopping issue. Over one in three members in this retail survey reported that



cross-border shopping affected his or her business and nearly the same percentage cited Sunday closings in Canada as a reason for the increasing Canadian consumer shopping in the United States. Clearly, it is not the only reason. Cheaper prices in the States were cited by almost everybody, but there is still a significant proportion that does see it as a reason and these issues do need to be addressed.

In terms of the bill itself, what small business is always looking for in legislation is that it be simple, straightforward, not take any extra time or expertise to understand and not impose any additional costs. They do not have sophisticated lawyers and staff on hand to work through these bills and be able to understand them. It is up to the owner to figure it out. So we are asking you to please take a good, hard look at this bill and test its provisions against this standard of simplicity, straightforwardness and no additional expense, time or expertise needed. We see it wanting in several respects. The tourism criteria are vague and poorly defined and they just make a confused situation even worse. What this does is create uncertainty, and uncertainty is always expensive and time-consuming for business, because they need to sort it out. They cannot just take a look at it and say, "Okay, this is the law."

It concerns us that the bugs in the bill are going to be worked out on the backs of the business community, that the problems in the bill are going to unfold and create problems for individual retailers who are having to cope with them. We have suggested the government take the time to develop the package into a clear, concise, simple, straightforward bill that the people in businesses expect and deserve from their government.

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We also want to register our objection on principle to the trend that we are seeing more and more within government to use regulatory authority in a way that we think is quite improper. Regulatory authority is there to allow government to deal with the detail of administration and not burden the Legislature with matters on which there is really no debate. It should not be there to deal with issues of weighty public policy behind closed doors and not subject to public scrutiny. To put the tourist definitions in the regulations means that any changes to them will not be subject to full public debate, and the public deserves the accountability of all of its elected MPPs on this issue.

I reiterate the point that retailers in areas that receive a tourist designation need to have freedom of choice to close if they want to, even if the other stores in the area are permitted to be open. That individual choice is really important.

In terms of the amendments that are proposed to the Employment Standards Act, I am sure that every retail organization that has appeared before you has been telling you the same thing, which is that their employees are the nuts and bolts of their business, that if they do not have satisfied employees they are not going to be successful in retail. Service is key here. Human considerations rank especially high in small retail operations because the employees tend to be the friends, the family members, the neighbours, the sons and daughters of acquaintances of the owner himself. They have already got a human relation-

ship there beyond even the productivity aspects, so small business retail owners are very well aware of the need to make sure that their employees are taken care of and are working when they want to work and not being forced to work when they do not want to work.

I just want to draw your attention to some recent research that we did conduct through the Angus Reid public opinion polling organization that reveals that employees in small, non-unionized establishments tend to be more satisfied with their jobs and their working conditions than workers in large, unionized workplaces. There is obviously a variety of reasons for this, but one that came through quite clearly was that employees felt their problems were addressed more effectively in an informal, less structured workplace where they could just go in and talk to the owner about the problem, sort it out, come to a mutual agreement and get on with things, where there was a great deal of mutual trust and respect. Small businesses are very clear about the importance of having good working relationships with their employees, and they strive to make those work. That is their only competitive advantage, good service. They cannot compete on volume. Sometimes they cannot compete on price. If they cannot compete on service, they are not going to make it, and they understand the importance of happy, productive workers to that aspect of their competition.

When we asked our members what measures they thought should be in place to protect employees if Sunday shopping is permitted, over 80% agreed that workers should be able to refuse Sunday work. They do not have a problem with that. They do not want people working if they do not want to work. Over three quarters thought employees should have a guaranteed right to at least a day off in seven. These survey results were obtained before Bill 115 was unveiled, so they did not know the provisions of the law at that time.

There is little support for premium pay for Sunday work and this again reflects the reality of the small retail situation. They are operating under very tight margins. They do not have a lot of extra money to give away for premium pay and they would have incredible difficulty operating if all their employees had the same day off.

This is not to say that giving workers the right to refuse Sunday work is easy or cost-free for small retailers. Over 62% said that they, the owner, would have to work longer hours if their employees could refuse Sunday work. That again is based on the fact that they do not have a huge pool of employees. If you are in a small establishment with two or three employees and they say they do not want to work Sundays, it is up to you as the owner to carry the load.

However, some of the costs that small employers would bear they understand will be productive to the economy and help spur on their recovery. Thirty-eight per cent reported that the workers who are willing to work would work increased hours on Sunday and therefore would have more take-home pay in their own pockets, and 35% indicated that they would need to hire additional staff for Sunday work. Given the number of small retail establishments in the province, even if each of the 35% took on just one more employee, this would mean over 14,000 new jobs to

aid in Ontario's economic recovery. It may be a part-time job or it may be a full-time job, but a job is a job. It is still income, it is still flowing into pockets of people who would then be spending it and aiding in the recovery.

Small firms play fair with their employees and they want their employees to play fair with them. They do whatever they can to honour an employee's preference not to work on Sundays and even to waive an employee's prior agreement to work a particular Sunday if good reasons prevail. The name of the game is responsible mutual relations between owner and workers. The government should take a good, hard, long look at the Sunday refusal provisions in Bill 115 to ensure that they encourage responsibility on the part of the employees, as well as the employers. The revolving door of workplace relations does not swing only one way.

An employee who is encouraged by law to breach his or her agreement to work on Sunday for no good reason, merely by giving 48 hours' notice, especially when that employee was hired specifically to work on Sundays, is not an employee who is going to contribute to our recovery from this recession or to any kind of sustainable prosperity in Ontario.

If there are bad apple employers out there, they should be dealt with under the Employment Standards Act through fines, prosecutions, the way we deal with the bad apple employers as it is right now. The solution to bad apples is not to encourage all employees to hold their work agreements cheaply.

Just a final word: Part of the distress out there is being caused by the fact that the situation is so unstable. We did not have Sunday shopping, then the Sunday shopping law was struck down, then we had wide-open Sunday shopping and people adjusted to that, and now the law is back in place and people have to readjust. That does not instil confidence in the business community. It is an unequal, unbalanced situation, and so what we need here is some stability, certainty. Let's smooth this out and find something that everybody can understand and work with and not create more uncertainty and more instability in an already difficult situation.

Thanks very much, and I am happy to entertain your questions.

**Mr Daigeler:** Thank you very much for a very well-researched brief, as always, from your organization. We get a lot of facts and figures that reflect very careful work and attention to making sure that your statements are backed up with what your members in fact feel. I thank you for this.

On page 4 of your brief, at the bottom, you are referring to leases that individual retailers may have signed with the mall owners, and then you are saying these leases may have been signed before Sunday openings were at all contemplated, yet mall owners enforce them to the letter. What do you mean by that? Are you saying that mall owners force the retailers to stay open against their wishes?

**Ms Ganong:** In some cases that has happened. The lease does not talk about Sunday openings per se. The lease basically says, "I, as a store owner, agree to be open

whenever the mall is open." So when the Sunday shopping law was struck down and Sunday openings became permissible and malls wanted to be open on Sunday, mall owners could then hold small business owners to the terms of the lease and say: "You said you were going to be open when the mall is open. The mall is now open on Sunday. You need to be open on Sunday."

**Mr Daigeler:** I am aware of that. Your testimony seems to go in a different direction than what we heard here. We have asked that several times, where people said that despite that lease provision no one forced the retailers in the malls to stay open, and in fact many of them closed. In fact, Mayor Fratesi this morning was one of them.

**Ms Ganong:** It may be that the mall owners who were doing that did not come to appear before the committee. We did have some complaints from our members about those situations.

**Mr Daigeler:** Is there anything you can provide us with, or is it just individual—

**Ms Ganong:** When our members complain to us, they usually do so on a confidential basis. Now that the law is back in place, it is not prevailing any more, but it is just something to be aware of, that the choice element is really important. With the new law, under the tourist area designations, that is where it would come into play. Suppose the Beaches were designated a tourist area; the small stores in the Beaches area would still have the right to remain closed if they wanted to, even if the whole Beaches could be open.

**Mr Daigeler:** I do want to leave a little bit of time for my colleague here, so just a very quick question: Several people have argued that it should be the province or a provincial body that should decide what is and what is not a tourism area. Do you have any views on that? In particular, that a committee be established with representatives from labour, business and so on, that would decide on that. Do you have any thoughts on this idea?

**Ms Ganong:** The problem is always one of certainty; the less certainty you have, the more difficult it is for small businesses. They basically do not have a lot of time to mount legal challenges or to appear before different bodies or whatever. So the more certainty you can create the better. We cannot really comment on whether it should be the province or the municipality or what. But you basically need to have a system that creates certainty so that small businesses know what the law is and what they can and cannot do.

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**Mr Cleary:** I know you do not have an easy job either, dealing with the number of people you deal with. What was the date of your last survey?

**Ms Ganong:** This survey? These results came out in June.

**Mr Cleary:** And in brief, what do you recommend?

**Ms Ganong:** We cannot really make any firm recommendations given that we do have this split in our membership vote. We cannot recommend in favour of Sunday opening, Sunday closings, municipal options



versus provincial options. We only take positions based on our members' views, and when our members' views are this split we just cannot take a position. All we can do is basically present what they think to you.

Again, all I can reiterate is that the law needs to be clear, certain, straightforward, not expensive for small businesses to cope with, and some of the provisions with regard to protecting retail workers need to be relooked at so they are not going to be encouraging capricious abuse, basically, of the power to review Sunday work, but are looking at making employee-employer relations work better.

**Mr Cleary:** Your group could have made it a lot easier for this committee if you were to come out with a recommendation, but you cannot.

**Ms Ganong:** I am sorry, we cannot. Without a strong member position in favour one way or the other, we just cannot. We do not make it up. We only go with what our members say.

**Mr Carr:** The problem you are facing is the same as the population, because you know the polls. We got some from our fine researcher that were done by, I guess it was the NDP who watched the first six months, who basically said the same thing and broke it down by all areas, and it split. When you look, they even asked, "What party did you vote for?" and NDP split and so on. All parties are split. So it is a very difficult question.

But in getting to numbers, I know there are a lot of them. I want to say I appreciate that and I appreciate all the information I receive and I hope that continues, so do not strike Gary Carr off the list, because I really do appreciate it and read it. But the numbers you are looking at, what are they again: 55-45, what is it?

**Ms Ganong:** That was the 1988 vote and it was a national vote of members from all sectors, sizes, ages, all across Canada. At that time what the members were looking at was the municipal option which the Ontario government was then considering. So we asked them if they favoured the municipal option for regulating Sunday openings, and 55% of them said they opposed it. So again, it is not a strong vote pro-con either way.

**Mr Carr:** And when it is outdated like that, a lot of people as we have gone around have said that a lot of things have changed in that period of time.

**Ms Ganong:** That is right.

**Mr Carr:** As you know though, what this has come down to has been a municipal option. In spite of the fact the government has set the common pause day when they put the tourism exemptions that you know are so broad they sort of throw it back in the ballpark of municipalities. You may have been here when I said as we have gone around the provinces significant portions have said, "Thank you very much. We are going to take it and we are going to open," in Windsor, Sarnia and so on; you can go through the list. As a result, the fight has really gone back to municipalities. A lot of people are saying, "That's great, but the province has handed off so we are now going to gear up for that fight."

Are the business community or your organizations to the best of your knowledge going to be able to participate

in that fight? I know you said most of them are small, and Lord knows it is tough enough to survive, but do you see your members now having to go to the big fight that will be going on in Toronto and North Bay and everything else? Is that where your members will now have to focus their attention?

**Ms Ganong:** In terms of going before municipalities?

**Mr Carr:** Yes, before municipalities and so on.

**Ms Ganong:** The truth with our members is they are putting all their focus into just getting through, making it—

**Mr Carr:** Surviving.

**Ms Ganong:** Not laying people off. Retail is not a really healthy environment right now. We are hoping it has turned the corner, but it certainly has been a very difficult year. Part of the problem with having to apply to municipalities and going through administrative hoops is just that small businesses cannot cope with that sort of administrative apparatus. If the owner is not in the store, there is nobody running the store. Big firms can cope because they can send the vice-president of this or the manager of that to make their representations and business goes on. But for a small owner with just a few employees, if he or she is not there nobody is running the store.

**Mr Carr:** I agree they should be in the store making money rather than appearing before municipal councils, but one of the things that does come up is in some of the tourism areas. Just so you know, when we have had chambers come they have said the same thing. They have tried to break it down to retail, and there is a big battle in the chambers non-retail versus retail, and you can break it down further. But there are some communities, for example in Collingwood, where they said: "We need to have a tourism exemption. We do not see people spending any more money, but what we do see is that somebody who comes up here on the weekend"—as you know, many people from Toronto have cottages up in that area—"they might not spend any more, but they will spend it in Collingwood rather than coming back to Toronto." So, as a result, they have taken the tourism exemption to try to get the money in their area.

One of the concerns is that what this legislation will do is pit members against each other. I can see a retailer in one area who happens to be open, and next door in a municipality that is closed a retailer who is not open because the municipality chose not to take that option. That would create a lot of problems. Do you see that as being a big concern for your members, this patchwork?

**Ms Ganong:** That, we think, was one of the reasons we got that 55% vote against the municipal option in the first place; the members saw that sort of domino effect that would be created, the pressure that would be created among the different municipalities.

**Mr Carr:** As you may be aware, a lot of the people have said these tourism exemptions have been criticized by both sides of the issue, because you can take them any way you want. They are fairly broad. What a lot of groups have called for is that we get the group of stakeholders

together and try to iron out a tourism exemption. You get the unions and you get the small business and you get the tourism people.

I was just wondering what your best guess is, as you have dealt with all these people and know the political process very well. Do you think, because the argument has been made and the government had, I suspect, a tremendous time coming up with the tourism exemptions, if everybody puts their heads together that some type of agreement could be hammered out that would be reasonably acceptable to everybody on the tourism exemptions?

**Ms Ganong:** I do think that is possible. The main thing that a process like that really needs to guard for is that small businesses are properly represented. Again, it is the same resource problem. You need to be able to free up somebody who can sit on the advisory group, or the committee, or the task force or whatever it is that is struck, and bring forward the concerns of small business.

Again, large businesses have the resources to be able to do that. The problem we see with any of the advisory groups or bodies or committees that are struck around this government to consult, is that large businesses can free people up and they can get their point across and it is not a problem. But the interests are not always the same as those of small businesses. It is very difficult for small businesses to let someone be away from the business in order to participate. It is a great concept. It just needs to be done very carefully to make sure that small businesses can truly participate and be a part of it and get their viewpoint across.

**Mr Fletcher:** Linda, how are you? It is good to see you again.

**Ms Ganong:** It is good to see you too.

**Mr Fletcher:** I have half a question; I had a whole bunch. Every time Linda is in front of us I want to ask more questions.

Your statement on page 4 is, "The regulation-making power is not intended to be an escape hatch to allow government to change important matters of public policy behind closed doors." This is one of the few times that you will ever find regulations going out for public debate along with the legislation, and we are proud of that. We think that is open, upfront, something we said we were going to do, something we promised to do during the election, and that is what we are trying to do, be open and up front. But I do understand your concerns.

Do you think the regulations themselves should be part of the legislation or can we have regulations where, if there is going to be a change, we get to the stakeholders, as Mr Carr was saying, who are the people making the criteria? They are the people who, if there are changes, if things happen, recommend changes, rather than coming from the bureaucracy or from the government. There is a way to work that in, is there not?

**Ms Ganong:** The basic problem with this particular bill is that this issue is very polarized. There is a lot of public opinion on it. Everybody has very strong feelings about it and it needs to be as open and up front as possible. I think it is great that the regulations are open for debate and open to be commented on in this committee, but once

they are passed and they are in regulation form, then the changes can be made to them without having this kind of public process again.

That is what we are objecting to on principle: Matters of important public policy should always be in the Legislature, and regulations are really to deal with the little nitty-gritty things that nobody really has a problem with, that there is no real debate about. Matters of public policy where there is debate should always be part of the legislation. I know it is slower and it is more time-consuming, but it is democracy.

**Mr Fletcher:** That is right, I agree with you.

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**Mr O'Connor:** I appreciate your openness and honesty in saying that your group did not come up with a consensus and that it is very hard to speak with an unqualified consensus when you do not have one. Your poll is probably more reflective because it did not include the recession at that time. So I might argue the point that it is probably more reflective although exacerbated by the cross-border shopping and those retailers in those areas.

**Ms Ganong:** The retailers are not out of the recession yet.

**Mr O'Connor:** I know that. That is why I am saying the poll reflected a different set of circumstances, and when we come out of that, it may reflect more like that.

On page 6 of your brief you said more hours and more jobs are being created. National Grocers and a number of different retailers who came before us said there were not actually more hours, it was a matter of rescheduling those hours. I would just like you to comment on that.

**Ms Ganong:** What these members were talking about was if their staff had the right to refuse Sunday work, how would they cope with it? What effect would it have? Some of them said they would be the ones who would have to work longer hours, they would be the ones filling in. If the staff were not there, they would be there. Others said that if the staff refused to work Sundays, then the ones who were willing to work on Sundays would be working longer hours. Perhaps they were part-time during the week and they would carry over extra part-time hours on to Sunday. Those existing staff would work longer hours to cover for the staff who did not want to work Sunday, and 35% said they would have to hire fresh staff because they would not be able to cover with what they had.

**Mr Lessard:** There are a lot of things you have said in your brief that I agree with and I just want to make sure I have them. You have mentioned you would like to see the tourist criteria in the bill itself. That sounds like a good idea. You mentioned the protection for tenants in malls. I think what you would like to see is a provision in the legislation that says that even if a mall is determined to have a tourist exemption, individual stores within the mall still have the right not to open.

**Ms Ganong:** Right. Even if it is not a mall, even if it is just an area, say for instance the Beaches, whatever area gets a tourist exemption, those individual retailers still have the freedom of choice within that area to be closed.



**Mr Lessard:** In the Beaches, they would not have the same provision in their leases as a mall would.

**Ms Ganong:** No, there would not be leases. It would just be a question of are they bound by the tourist designation when it is given by the municipality for all of them to be open or do each of them still have individual choice? That is just not clear.

**Mr Lessard:** The other thing you would like is some provision that says if a person is hired to work specifically on Sundays, they do not afterwards exercise their right to refuse within 48 hours.

**Ms Ganong:** In a capricious way. Obviously, if they are sick or there is a family emergency—I mean, for good reason—clearly, anybody can say: “I just can’t come in this Sunday. This and this is going on. Can we reschedule it?” But not to just say, “I’ve got the right under the law, so I can call you up with 48 hours’ notice and just say, ‘Screw you, I’m not coming in.’” We are concerned that this not happen.

**Mr Lessard:** Would you want to distinguish between employees who were hired specifically to work on Sundays and employees who have already been employed when this law comes into force?

**Ms Ganong:** Certainly—

**The Acting Chair (Mr Kormos):** That question is well put, Mr Lessard.

**Ms Ganong:** Do I get to answer it? If an employee has been taken on specifically with the understanding that he or she is going to work Sundays and has agreed, “Yes, Sunday is my day of work,” to be able to say, “No, I’m not coming in on Sunday with 48 hours notice, and I don’t even have to tell you why,” certainly seems like an abuse.

**The Acting Chair:** All of us thank you for the interest of your organization in this issue and the effort and consideration you have put into your submission. I am confident I speak for everybody here when I tell you it has been a valuable exchange.

**Ms Ganong:** Thank you, Mr Acting Chair.

**The Acting Chair:** I have been acting just about everything, and it may be that way for a long time yet.

#### FAIRNESS FOR FAMILIES

**The Acting Chair:** Next is Mr Vandezande from Fairness for Families, whose brief has been distributed, and the brief is rather lengthy. We have half an hour. I am hoping, because I know there is going to be a lot of interest in some of the recommendations, that you might highlight the brief so we can get down to discussion, and try to save perhaps 15 minutes for discussion, because that might well be a more valuable part of the process this morning.

**Mr Vandezande:** Thank you, Mr Chairman. I appreciate your comment. I have given two documents. One is the extensive brief. In addition to that, there is a seven-minute opening statement which summarizes our position. I would welcome lots of questions and I am prepared to run overtime at no pay. Thank you for the opportunity to appear before your committee. I should mention I am

slightly deaf so if the members of the committee could speak up, I would appreciate it. I shall do the same.

**The Acting Chair:** Usually that quality is attributed to the government.

**Mr Vandezande:** That is why I addressed it to you, Mr Chair. The members and associates of Fairness for Families are listed on page 4. Please note that includes all of the churches in Ontario, half a dozen major retailers’ associations, key business enterprises, such as Sears, as well as the trade unions and other groupings. So it is a large coalition.

As I mentioned earlier, the detailed recommendations are in our brief. I will make a couple of specific additional recommendations in the opening statement. A month ago, you began public hearings. In two weeks, you will begin the clause-by-clause review. Soon you must decide on one basic issue and one only: Will you or will you not implement the principle that holidays should be maintained as common pause days?

Your vote in favour of an effective common pause day law will be a major contribution to the social wellbeing of our communities. Your public support will also be greatly appreciated and long remembered by hundreds of thousands of retailers, retail employees, their families, friends and neighbours. They do not want to work on Sundays or any other holidays. They do not want wide-open Sunday and holiday shopping. They know from experience that Sunday shopping and holiday shopping means Sunday working and holiday working, and that a seven-day-a-week rat race makes neither economic nor social sense. That was again confirmed yesterday by National Grocers, this morning by the Committee for Fair Shopping, as well as by the individual experience of the many retailers associated with our coalition through their retailers’ associations.

In order to ensure province-wide consistency in the interpretation and the implementation of the new law, we recommend that the Legislature adopt amendments that will at least do the following: (1) establish once and for all that the act’s paramount purpose is the principle that holidays should be maintained as common pause days; (2) clarify that the maintenance or development of tourism in Bill 115 must be subordinate to this basic purpose, not paramount or correlative.

In this connection, we appreciated testimony that was presented on August 15 by Mr Pilkey, who said that the principle of a common pause day is not up for negotiation and that the primary goal of this legislation is to provide a weekly common pause day. We think the act should be amended accordingly and that the confusion which now reigns in this bill should be cleared up, so that the Legislature, the public, the consumer and the retailer know exactly what kind of law and what kind of principle they must abide by, and so that the police will know how to enforce the law.

In keeping with that goal we recommend that subsection 4(1) be changed to read that the purpose of the act is to establish the principle that holidays should be maintained as common pause days.

If the Legislature insists that the municipal option stays—and, as is clear from our lengthier submission to you, we do not want the municipal option—we are recommending that the council of a municipality must maintain the principle that holidays are common pause days. The council may by bylaw then permit retail establishments in the municipality to be open on holidays for the maintenance or enhancement of tourism, in strict compliance with the tourism criteria regulation made under the act.

Furthermore, if the municipal option stays, in order to provide province-wide consistency in the application and the enforcement of the law, we recommend that the Legislature adopt amendments that provide for a provincial appeal process and an expeditious, independent, non-partisan review mechanism which ensures two things: (1) the intent of the act, namely, that holidays are common pause days, and (2) that the tourism criteria under the act are strictly observed by all municipalities.

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During recent months, there has been enormous debate about the issue of cross-national-border shopping. All of us oppose it. We are saying to you, do not introduce cross-municipal-border shopping. You can prevent cross-municipal-border shopping by insisting that municipalities all behave in the same way and that there be a provincial appeal process and review mechanism that ensures that there is no unfair competition between municipalities and between merchants in different municipalities. Our position is, let's prevent a mishmash of municipal bylaws which ultimately will result in wide-open Sunday shopping. Let's have a uniform pattern, and let's prevent a domino effect and the checkerboard pattern that will only cause confusion and conflict.

In order to prevent abuse of the tourism criteria as they now read, and to permit bona fide tourism exemptions, the criteria that must be met before a municipality or a merchant seeks a bylaw must be clarified, and they should be subject to public participation and public scrutiny.

These criteria should include at least the following. The section of a municipality to be exempted for tourism purposes must be restricted to close proximity to the tourism attractions and activities described in the regulation under the act. Second, retail business establishments in a section of a municipality may be exempted only if the section in the municipality has traditional tourism characteristics such as cultural, educational, historical, natural or outdoor recreational attractions, and if the section predominantly provides for shopping activities which feature a unified concept or theme, such as farmers' markets, the sale of heritage, handicraft or other items that are unique to the locale. Finally, an exemption may be granted in connection with fairs, such as the Stratford Festival, or other special-event attractions, provided the exemption is limited to the location and the duration of the event.

Finally—and I watched with much interest the presentation made this morning by the Committee for Fair Shopping, and read the brief made by National Grocers yesterday—the Legislature must ensure that the supermarket-size drugstores, which continue to masquerade as pharmacies but really are not, no longer have an obviously

unfair competitive advantage over grocery stores and other retailers which respect the law. Under the guise of sundries, certain drugstores—and some will be appearing this afternoon, I am sure—sell food, clothing, hardware and other non-pharmacy items on Sundays and other holidays when their competitors selling the same products must be closed.

In the past, and still today, municipal and provincial governments' inexcusable failure to enforce the law promptly and strictly caused and causes widespread violations of the law and useless appeals to the courts. That nonsense must be stopped. You have the opportunity to put a halt to that practice.

As has been repeatedly pointed out by others, the Legislature is duty-bound to provide a level playing field. Accordingly, we recommend that the Legislature amend subsection 3(2) of the act so that on holidays a pharmacy size is restricted to 5,000 square feet, its staff composition to four employees, its product mix to pharmaceutical and related products, and delete the word "sundries," which has caused innumerable problems and court appeals.

In a separate document, we have included other detailed proposals that I will not go into. I am simply saying, in conclusion, that simplicity should be the rule. Consistency, equity and enforceability should be the guidelines that shape the legislation, so that you have something that is practical, that is workable and that is fair to all. I am open to your questions.

**The Acting Chair:** Thank you, sir. I should indicate, in view of the fact that there is a one-hour gap between 12 and 1—it is redundant to say that, but it was designed as a lunch break. The next presentation is not scheduled until 1 o'clock. I am prepared, subject to what people here tell me, to extend the time beyond 30 minutes, in view of Mr Vandezande's willingness to participate, in any event.

**Mr Daigeler:** I am not quite sure what you said.

**The Acting Chair:** I can understand that, but that is not the point. Please start asking your questions now, because time is fleeting.

**Mr Vandezande:** I understand that my time runs till 12:15.

**Mr Daigeler:** How much time do we have according to the usual 30-minute criterion?

**The Acting Chair:** Please let's not waste time arguing about that. Talk to Mr Vandezande.

**Mr Vandezande:** I can even sit right through lunch.

**Mr Daigeler:** I do have a luncheon appointment, so I certainly will not be able to stay here too long.

**The Acting Chair:** Well, hurry up and ask your question.

**Mr Daigeler:** You certainly have presented very useful, detailed amendments. We will want to take a careful look at what they mean in this broader document here before we come back to look at the detailed amendments that the opposition parties will be putting forward and that the government will be putting forward. In view of the position you have taken and that the government has taken, to promote a common pause day as much as possible, I think



your amendments are probably the most appropriate. It is going to be very interesting to see whether the government will support them, given its avowed commitment to the idea of a common pause day. It is going to be very interesting.

**Mr Vandezande:** And I hope you would support them.

**Mr Daigeler:** I am, of course, wondering how you would react to someone like Mayor Fratesi; I think you were here this morning when he made his presentation. What would be your response to someone like him, and like the many others who came, who spoke in a similar vein?

**Mr Vandezande:** I think you should keep in mind that the Association of Municipalities of Ontario generally does not favour the municipal option. It has in the past, and still today, consistently argued that the municipal option causes all kinds of problems. There are only a few municipalities, like Sault Ste Marie, that have favoured it for their own reasons, without thinking through the negative consequences that a municipal option presents.

I am sure the mayor of Sault Ste Marie and other mayors favouring the municipal option would not want the responsibility or the freedom to amend other kinds of provincial legislation that provides for provincial standards, and be able to do whatever they wish in their own municipality. If we are going to have meaningful government that is fair and equitable across the board, in education, in health and in welfare, you need consistency and you need equity.

So when it comes to the question of the municipal option, as we have argued with Bill 113 and will argue again with this bill, you have to have province-wide standards that are equally applicable to all municipalities and all merchants. I think that can be done by giving the municipalities through AMO, and the other stakeholders, a real say through a provincial review mechanism in the decisions that must be made with respect to the interpretation of the tourism criteria and the enforcement of same. Such a provincial board can then do justice to the peculiar interests of Sault Ste Marie, or any other tourist area. So I think the mayor would agree that you do not want a mish-mash of municipal bylaws that cause conflict and confusion between municipalities, because that would break the solidarity across this province. It would only cause more damage than do good.

**Mr Daigeler:** More as an aside, I think the mayor has indicated that even in other areas he would wish more municipal option rather than less.

**Mr Vandezande:** But that is the kind of separatism we do not want.

**Mr Daigeler:** Anyway, it is an approach. I think it is an approach to public policy that a lot of people support. I for one am inclined to support smaller groupings rather than having it imposed from the Big Brother upstairs.

**Mr Vandezande:** I agree with that.

**Mr Daigeler:** So there are different approaches and I think we have to respect that, and the mayor—

**Mr Vandezande:** But the problem is, Mr Daigeler, the municipal option—

**Mr Daigeler:** I think I have the floor right now.

**The Acting Chair:** One minute. He is responding.

**Mr Vandezande:** I am responding to you.

**Mr Daigeler:** No, no. I have not—

**The Acting Chair:** I said he is responding to you. Please let the man speak.

**Mr Vandezande:** You see, the municipal—

**Mr Daigeler:** Who is speaking at the moment?

**The Acting Chair:** Mr Vandezande is responding to you. Please let him do that.

**Mr Daigeler:** Mr Chairman—

**Mr Vandezande:** Okay. Go ahead, Mr Daigeler. Go ahead.

**Mr Daigeler:** Mr Chairman, I had the microphone. You gave me the—

**The Acting Chair:** Mr Daigeler, one moment please. I am doing my very best to permit as much time for each caucus to engage in dialogue with Mr Vandezande. Mr Vandezande is responding to an issue that you put to him. If you do not want him to respond to that issue, I recognize that. But, please, if we are going to pose a matter to a presenter, let's let that presenter respond. There is lots of time. Let's let that person respond. We are trying to have some sort of dialogue here. We are trying to do it in an orderly way. Please, go ahead.

1200

**Mr Daigeler:** Mr Chairman, the orderly way is that the person who has the floor finishes his remarks. I had the floor, assigned by you, and I was interrupted by the witness, so if I can finish my remarks and my questions—

**Mr Vandezande:** Sure, go right ahead.

**Mrs Cunningham:** Go ahead and do it.

**Mr Daigeler:** I will go ahead. Thank you.

You then, from your position, favour the province to decide what should be tourist areas and what should not.

**Mr Vandezande:** That is correct. Pardon me for having interrupted you. I thought you were finished with your question. When we say a province-wide standard, we do not mean Big Brother attitudes. What we mean is participation in a province-wide, representative, non-partisan board or mechanism on which the municipalities are represented, trade unions, the tourism industry and others, so that you indeed have representatives from the different local communities participating in the interpretation, the application of the law.

I have been at a couple of dozen municipal hearings during the last few months. It is clear that municipalities are either in the dark or confused and do not know what to do with the municipal option; abuse it left, right and centre. What we need now is some consistency and equity and simplicity in the approach to tourism, and clearly the municipalities currently are not capable of it. I think it would help the situation across the board if the representative tribunal, perhaps as part of the Ontario Municipal Board,

would consistently interpret the criteria in a fair way so that justice is done to all the local communities.

I participated in the hearings in Windsor, in Niagara, in Kingston, in a number of other communities. You see the craziest interpretations of the law. You see a developer getting permission to develop a piece of property for tourism purposes when the retailers are not even known, and that is done in an in camera session without there being any public participation in the discussion at that point. I say we need to prevent local politicians from being subjected to illegitimate pressures by developers and others, and let them have the benefit of impartial, independent assessments made by representative provincial boards that have to abide by province-wide criteria fairly established by the Legislature.

**Mr Cleary:** First of all I would like to thank you for your brief. I just cannot agree with everything you said because I was a municipal politician for many years before I came here and I have attended the AMO conference for over 20 years now. I do know that I know many of those people there. They have always been critical of every government that has been in power for not letting them make their own decisions.

**Mr Vandezande:** But on this issue—and AMO was a part of our coalition—they said, “We don’t want the municipal option.”

**Mr Cleary:** It was not unanimous.

**Mr Vandezande:** No, that is true.

**Mrs Cunningham:** Mr Chairman, this is not, of course, the first time that we have heard Mr Vandezande on this issue, but I will say to the government representatives that over the three to four years that I have been involved in this issue, there has been, I think, significant movement in the recommendations that your group has made with a view to the practical realities of society today. I certainly appreciate that.

I think it is the kind of movement we need to see on behalf of government if we are looking for a compromise position. We will either stand up and say we are going to have a common pause day and do it, so that the province is responsible for it, or open it up, as I feel Bill 115 does. It does not have any status at all, in my view, with regard to a common pause day.

So on two points where you have made, I think, significant change, where you talk about a provincial appeal process and where your editorial comments that are not in print said, “Just in case this government chooses the municipal option,” both of those positions make me a bit nervous, because it makes me nervous to think that they would not stand up for what they believe in and have a board. They have had that recommendation before.

I happen to know from listening to the responses from individual members that they are very nervous of the board, because they feel it is going to be very expensive. So I would like you to respond to that, and if you do not, I will certainly let them know how I feel about that.

Second, interestingly, I have not had the opportunity to ask this question before, but barring everything, there has been a lot of representation to all of us about the size of

stores, not just pharmacies, but other stores as well. They are talking about limiting the size, in this view, and also talking about the numbers of employees. You talk about this in the case of drugstores. I am just telling you there have been other presentations that have said all stores.

One of the pieces of strong advice we had from the Liberal government—and one of the reasons I feel they are not here right now is because they listened too much to their bureaucrats instead of their own common sense—was that one could not in fact enforce four employees. So two questions.

**Mr Vandezande:** Thank you. With respect to the expense, the experience of municipalities now is, if you talk in terms of expense to the taxpayer, it is enormously costly to conduct public hearings, to have delegations appear before municipal councils. It took, in Niagara alone, over 100 hours to deal with one simple application, which should have been turned down to begin with. Thirty councillors listened to that application. Had there been clear criteria, had there been a professional board that quickly makes a decision, “This you can and this you can’t do,” that nonsense would have been out of the way. It would have saved the taxpayers enormous money.

With respect to the size of the stores, we think there ought to be consistency across the board; also to prevent an unnecessary charter challenge. Frankly, it would be ideal if you could have a 2,400-square-foot cap right across the board with respect to pharmacies, with respect to convenience stores, with respect to stores open for tourism purposes. Then you prevent the unlevel playing field that this morning the Committee for Fair Shopping and National Grocers have been rightly pointing out. You make for consistency.

Just keep in mind that this room here is about 1,200 square feet. If you have a store twice this size, it can adequately meet the health needs, the drug needs, the tourism needs, that is, the regular tourism needs, groceries, etc, of people, so why worry about the larger-sized stores?

The big stores within our coalition do not want to be open. None of the big stores want to be open. The big stores this morning said they do not want to be open. It costs them too much money. So let’s make it easy, 2,400 square feet across the board, everybody equally. You have an equal playing field. You have consistency. It makes it easier for the police to enforce. If you couple that with four employees, as Manitoba does, you have an easy enforcement mechanism. All you have to do is check the payroll.

**Mrs Cunningham:** Was that not a great answer, Mr Chairman?

**The Acting Chair:** It was a good answer. I am even prepared to say it was a good question. Your next one, please.

**Mr Carr:** I think you are right and I appreciate all the effort you have made. I think you should know very well, because you have been around and you have had not only to hear what has happened in the past, to hear a lot about these hearings, but you have had firsthand experience at these meetings about what happens. I think that is important, because legislation that is talked about in the province, then



you see the reality out there. It was interesting that you pointed out the 30-odd people, the amount of hours and so on, so the cost involved is tremendous.

Also what has happened, as you know, the confusing part, is that people have one position if they designed the bill and then, based on this bill, they have to change things and rework things. They have an ideal position, then they have their "like" position and then another position.

I appreciate you have come in with some very hard recommendations here, listed and outlined very clearly in legal terms and so on, but my question is this: If nothing changes in Bill 115 and we remain with it—and you know the Premier said there will be a common pause day—do you think we will in fact have a common pause day in the province?

1210

**Mr Vandezande:** You will not. This bill, if you look closely at subsections 4(1) and (2), has its principles reversed. That is not what I read in the throne speech. That is not what I heard Premier Rae say. Clearly, if the Premier and the cabinet take a hard look at what they said in the throne speech and what they have said in this bill, they will want to change this bill to make it consistent with their promises prior to the election, during the election and since the election.

I think with the help of the opposition we could clarify section 4. That is why we proposed the amendments that we did. You can come out of this with a bill that once and for all says to the public, says to the retailer, says to the municipalities: "We want a common pause day. For certain purposes you can have certain exemptions, and these are the basic rules." Should the government not do that, it would make a major mistake.

**Mr Carr:** I can appreciate where the Premier has problems, of course, because what happens is they put something in, intent, and then he does not follow it through, and then what comes back is not necessarily what the intent was. In all fairness, that might not be the government's fault. They say, "This is what we want, a common pause day." The officials go back and put it together, and when they come back, it does not add up. The only thing I hope the Premier is aware of, because let's face it, the cabinet and the Premier will make the decision on this, is that there are people—the sleuths who have been following us around will bring it to his attention and to Mr Pilkey's attention that they should stop saying there will be a common pause day, because two years from now, if you do not change it, there will not be. I think that has been brought home as clearly as it can be.

**Mr Vandezande:** It is quicker than that. If you do not change this bill, if you do not pass it as proposed by us, you will have wide-open Sunday shopping in November, the NDP will have lost immense political capital and all of you will lose your credibility as politicians.

**Mrs Cunningham:** And their seats, Mr Vandezande.

**Mr Vandezande:** Well, I am not in the polling business.

**Mrs Cunningham:** It did not take the Liberals very long.

**Mr Vandezande:** The point I am trying to make is, do not wait for the Premier to act. It is your responsibility as members of this committee to see to it that the bill is tabled in the Legislature, that it reflects the government's commitment—your own—to a common pause day and that you have sections in the act that specify tourism criteria that are clear and consistent. Then you can say to the people of Ontario: "We have tried to meet the demands that have been put forward during the election. Here it is." And you try to enforce it in co-operation with the police as best you can. If you do not do that, you have failed the public and you lose more political credibility.

**Mr McLean:** Just a short question. We have heard it said many times across the way during the recession that we should have wide-open Sunday shopping because it is good for the economy. What is your statement?

**Mr Vandezande:** Mr McLean, the Committee for Fair Shopping and National Grocers, in its brief yesterday, made it clear that a food dollar is a food dollar is a food dollar. You can only spend your money once, and that has been my experience as the person who gets the groceries in the family. In the long run, the total expenditures of a family remain the same. All you do is spread it out over seven days. All you do, as National Grocers pointed out yesterday, is drive up the cost for those same sales. The bottom-line effect is that you lose money.

I think if we want to create employment—and I will be glad to speak to you about that some time, as I did to the standing committee on finance and economic affairs the other day—there are far more effective ways of doing that. The basic issue to keep in mind in this committee is what is in the interests of the social fabric, the community life, the wellbeing of the workers, the retailers and their families. You have a powerful opportunity once and for all to say, "We want a common pause day in this province." Other jurisdictions have it, they practise it. We do not want to be like the States, I hope and I trust.

**Mr McLean:** But we heard last fall that we are going to have a common pause day. Where is it?

**Mr Vandezande:** It is your chance now to implement it.

**Mr Morrow:** I just have two really quick questions, and then I will turn the floor over to Mr Fletcher.

Municipal option is a really important issue. You know I have always been opposed to it. I am opposed to it now. I know you are opposed to it. I want to pick up on something the Liberals said when they were asking you questions. They said that most municipal councils across this province favour their own options now. We heard differently in Hamilton yesterday. We have heard differently in North Bay. Can you comment on that?

**Mr Vandezande:** Municipal councils before whom I have appeared, appear to be, when you talk to them privately, utterly frustrated with the fact that they have been burdened with a job that they did not want in the first place. The Association of Municipalities of Ontario has made that abundantly clear. They do not want it. They have said, "Please, let's have some consistency right across the board." I say, do them that favour. You do not,

when it comes to education, health and welfare, allow municipalities to do their thing. You say, "We need consistency across the board because this is a question of social justice." You do not allow communities, on their own, to do that individual thing, ignoring the provincial rules. I say, run with it; do it right, and get it over with and get on to the next job.

**Mr Morrow:** I could not agree with you more. This brief you gave us this morning is really good. The amendments are something. But I know you, Larry. I have to ask you the obvious question: What is your bottom line?

**Mr Vandezande:** My bottom line is, establish the principle of a common pause day. Make sure that the legislation honours that principle throughout. Make sure it is enforceable so that it is simple to understand, easy to enforce, and that those who are guilty of violating the law get the kind of penalty or are faced with the kind of penalty that will scare them from violating it. That is why we advocate the increase of the penalty provisions to \$10,000 for the first offence—not in order to collect as much money as possible, but to signal to the community at large: "Look, we don't condone arbitrary violation of the law, which we have had in the past. We're going to stop that."

My bottom line is the principle of a common pause day, make sure it is enforced by everybody, and make sure that a provincial agency exists that will see to it that it is enforced equally. Should the NDP not deliver on its election promises and on its throne speech, then make sure there is, if you allow the municipal option to prevail, a provincial mechanism in place that at least calls municipalities to task when they violate the law, as has already happened in a number of communities without anybody doing anything about it.

**Mr Fletcher:** Thank you, Mr Vandezande, for an excellent presentation. Thank you for being so candid and also presenting the political realities of the situation. I agree with you fully. On your opening page, of your brief, the throne speech said, "We will provide for a common pause day to help strengthen family and community life while protecting small business and the rights of workers." That is something the Premier said, and as far as I am concerned we have heard enough throughout the province and we, as a committee, are going to have to start doing our job. We are going to have to live up to what we have said. If we do not, then we do not deserve to be here. You proved that with the Liberals. I think that is exactly what happened.

There is one question I do have. In your brief, the pharmacy size of 5,000 square feet differs from what one of your members was saying, the United Food and Commercial Workers International Union. Is there a bit of a conflict there between the two groups?

**Mr Vandezande:** No, and Mrs Cunningham will bear me out on this. This whole issue of the size of a pharmacy came up during the Bill 113 hearings. Those of you who were around at that time will remember it as well.

**Mrs Cunningham:** They are all gone. Everybody who was around is now gone.

**Mr Vandezande:** But you were there. The point I want to make, and that our coalition is making, is we are concerned that the legitimate health needs of all Ontario citizens are properly met. If that requires in certain communities a pharmacy to be open that is 5,000 square feet in size, let it be so. So you can easily make a provision in the act that allows pharmacies up to 5,000 square feet to be open if that is needed in a particular community, because, say, a 4,500-square-foot pharmacy is the only pharmacy that is available in that community.

A guiding principle is that it is the government's obligation that the legislation facilitates meeting the health needs of the people in the community. So there is no difference between us and trade unions or the Committee for Fair Shopping or National Grocers. We are all saying do not allow these phoney drugstores to continue in their unfair competition. Make sure they indeed sell pharmacy and related products. Make sure the health needs of the people in this province are met. Do not allow them to violate the law, because if you do, you invite wide-open Sunday shopping. We are saying clear-cut pharmacy restrictions in terms of size, employee, composition and product mix, and you will prevent all the problems you have had in the past. You will please the people of this province and you might get re-elected.

**Mr O'Connor:** You mention that the size of this room is likely around 1,200 square feet. I am a very bad judge of size, but I would say it would have to be at least twice the size of the pharmacy in the fine community in which I live, and they provide a wonderful service. I do not think they have ever not come up with the prescription I needed whenever I did have to go for an illness in my family.

**Mr Vandezande:** The average pharmacy counter is around 900 square feet.

**Mr O'Connor:** I am sure that is probably bigger than the whole store. The cross-border issue which has been brought—

**Mr Vandezande:** Smaller, you mean.

**Mr O'Connor:** Yes. I think you need to look at this in the long term. And I seem to have the feeling that the cross-border issue is—hopefully, that is—a short-term problem. Do you think we should be taking a look at that separately or do you think we should just make sure we come in with—

**Mr Vandezande:** I appeared at the public hearings that were conducted by the region of Niagara. Merchant after merchant appeared before the council—and it is in a cross-border area—and said, "We don't want to be open on Sundays." It has nothing to do with cross-border shopping because it does not solve the issue. And these merchants opposed the applications that were put forward by Herbie's and by a developer asking for wide-open Sunday shopping. They said, "If you want to cure the cross-border shopping phenomenon, then you have to do something about taxes, about the price differential, the free trade agreement, a host of non-Sunday shopping issues."

I am simply here saying to you, on the basis of the evidence gathered by retailers' associations which are a member of our coalition, please do something about that



issue, but not through Sunday shopping because it will not solve it. It will only, as was pointed out again yesterday and this morning, drive up our cost of sales, but it will not increase our profits. So choose another route, use the mechanisms available to you and try to persuade Mr Mulroney and others in charge of that issue to do something about it once and for all.

**The Acting Chair:** Mr Vandezande, we all want to thank you for your presentation, for the obvious thought and work that has been put into your address today. As well, I think it warrants noting that you have been attending this set of Sunday shopping debates, as you have previous Sunday shopping debates. The respect both the

proponents and indeed foes of Sunday shopping have for you is notable and it is warranted. You have a great deal of credibility and I want to thank you for your interest in the matter.

**Mr Vandezande:** Thank you. One reason for being here is to make sure that you people deliver on your word.

**The Acting Chair:** Gotcha. Thank you. I want to thank everybody this morning. I want to say hello to young Mikey Grimaldi here with his father from Griffith Street in Welland in the heart of the Niagara Peninsula. We are resuming at 1 o'clock with Shoppers Drug Mart.

The committee recessed at 1224.

## AFTERNOON SITTING

The committee resumed at 1305.

## SHOPPERS DRUG MART

**The Chair:** I call this meeting to order. We have before us a delegation from Shoppers Drug Mart. We have approximately half an hour. Could you identify yourselves into the mike for the purposes of our recording.

**Mr Bloom:** I am David Bloom. I am a pharmacist and chairman of Shoppers Drug Mart. I am here on behalf of the 327 Shoppers Drug Mart pharmacist owners and their 10,000 employees who operate pharmacies in almost every single community throughout Ontario.

We did not expect to have to appear before you today. Bill 115 contains no specific amendments to the pharmacy exemption. However, we have been monitoring the proceedings of this committee and some of the submissions have been questioning the situation with regard to pharmacy. We have therefore decided to make this presentation to provide you with the facts as we know them concerning pharmacy.

Each Shoppers Drug Mart pharmacy is independently owned and operated by a pharmacist, called an associate, under the Shoppers Drug Mart marketing banner. I am accompanied today by two of my colleagues: Bobbi Reinholdt, who is the pharmacist-owner of the only 24-hour pharmacy in the Ottawa market; and Gus Miller, the pharmacist-owner of a Shoppers Drug Mart in Oshawa.

As health care professionals, all pharmacists, and I stress all pharmacists, are concerned about the safety and wellbeing of the patients in their communities. We therefore value the opportunity to be involved in this legislative process.

Pharmacy service is an essential component of the health care delivery system. Patients do not choose when to get sick. Purchases of prescriptions, first aid products and over-the-counter medications are not intentional. Patients do not plan their pharmacy purchases in advance. Pharmacy services and products are not impulse, optional or even discretionary. They are invariable. They are unplanned because they are often required urgently.

In 1988, when the Retail Business Holidays Act was proposed, Shoppers Drug Mart pharmacist-owners participated fully in the consultation process and made presentations in every centre where the justice committee appeared. In fact, many other pharmacists, both chain and independent, who were not associated with any particular banner made submissions to the standing committee as well. The entire profession was concerned about the availability of pharmacy and related health care services on Sundays, and I assure you the same is true today.

The standing committee at that time conducted its own research that determined the availability and the accessibility of pharmacy services. I understand that research was undertaken by your legislative researcher, Susan Swift, who worked in conjunction with the Ontario College of Pharmacists and other pharmacy organizations.

After due consideration, the standing committee recommended a size limitation of 7,500 square feet for pharmacies to remain open on Sunday. This was not an arbitrary decision. It was specifically selected because that square footage would ensure that adequate pharmacy services would be available in each and every community throughout Ontario. It ensured that the public would have adequate access to pharmacy health services on Sundays and holidays.

There is a mistaken impression that 7,500 square feet was selected because it benefited Shoppers Drug Mart. Let me assure you that is absolutely incorrect. The legislation was not enacted for the benefit of Shoppers Drug Mart, nor did it satisfy many other pharmacy operators. It did, however, achieve its intended purpose, which was to ensure that pharmacy services would continue to be available in every community throughout the province.

The act contained a one-year moratorium effective on March 4, 1990, to enable pharmacies that in that time were in excess of 7,500 square feet to either change their size or remain closed on subsequent Sundays. There were 49 Shoppers Drug Mart pharmacists whose drugstores were in excess of 7,500 square feet. Several of them downsized their pharmacies to 7,500 square feet; others remained closed. Shoppers Drug Mart pharmacists have always obeyed the law, and those who are over 7,500 square feet have remained closed on Sundays and holidays since that time. I might add that there a number of pharmacies, both within the Shoppers Drug Mart banner and many independent pharmacists throughout Ontario, which have actually increased the size of their pharmacies to 7,500 square feet as a result of the legislation.

Please understand that the legislation has in fact created a standard model for pharmacies in the marketplace. Today there are actually more pharmacies at or around 7,500 square feet in size than existed prior to the Retail Business Holidays Act. In preparation for this presentation, we conducted a survey just last week of pharmacy size in selected communities. You will find the survey data attached to the document I hope you have received by now. If you would like to turn to it, it is exhibit A on pages 10 and 11. I am confident that the results contained in this survey would be substantiated if this committee commissioned a similar one in Ontario today.

If you note on the charts, it has the communities—and again these are just selective communities; we have done more than this, but we have not tabulated them yet—total number of pharmacies, total open Sundays, total open Sundays over 2,400 square feet and total open Sundays 2,400 square and under and then the general population of the particular city. For example, Ottawa and area: total number of pharmacies, 136; total open Sunday, 53; total open over 2,400 square feet, 50; total open Sundays if the legislation was refined to 2,400 square feet for a population of 700,000, there would be only three pharmacies open. That is a description of those two charts.



Non-pharmacists—and I stress the word “non-pharmacists”—have proposed that the optimum size of a pharmacy allowed to remain open on a Sunday should be 2,400 square feet. If that recommendation were accepted, it would be catastrophic for the health, safety and wellbeing of the people of Ontario. There would be entire communities without any pharmacy service. For example, if you note on the chart, Sault Ste Marie, which presently has four pharmacies open on Sundays, would have no pharmacy service to service its population of 73,000. Strathroy would not have an open pharmacy. The closest would be in London, 40 kilometres away. Trenton, Brockville, Bowmanville, Chatham, New Liskeard and Hawkesbury, for example, would also have absolutely no pharmacy services in their communities. Northern communities, such as the Timiskaming area, including Timmins, New Liskeard and Kirkland Lake, would have only one pharmacy in that entire triangle open on Sunday. Kingston would have only one pharmacy to serve the needs of 90,000 people.

You can well imagine the stress this would place on the resources of the local hospitals. Patients would be forced to go to the hospital for minor ailments because they would be unable to purchase over-the-counter remedies as well as prescription products. By the way, most hospital pharmacies are closed on Sundays.

I would now like to introduce Bobbi Reinholdt, who will speak briefly about the pharmacy situation in the city of Ottawa.

**Miss Reinholdt:** As David already mentioned, in the Ottawa area, including Nepean, Kanata, Orleans and other suburbs, where there is a population base of over 700,000, there are 136 pharmacies, of which 53 are open on Sunday. If the square footage for pharmacy was reduced to 2,400 square feet, it would mean that only three of these pharmacies would remain open.

My pharmacy, which is 7,500 square feet, is the only 24-hour drugstore in Ottawa. From midnight Saturday to midnight Sunday we fill approximately 150 to 200 prescriptions, of which over 100 are for emergencies. Many of those prescriptions come from the outpatient wards of the five hospitals and several emergency clinics in the Ottawa area.

The brief you have received contains several letters I have received from the Ottawa hospitals, and they are listed in your handout as exhibit B. In the interests of time, I would like to read only one paragraph from a letter I received from the director of pharmacy services at the Children's Hospital of Eastern Ontario. He writes:

“On behalf of the pharmacy department of the Children's Hospital of Eastern Ontario, I support the application for the 24-hour pharmacy on Merivale Road.

“Surveys conducted by our department have shown that a significant number of prescriptions are written in the night-time hours when no other pharmacy services are available. The potential delays in receiving medication as a result of this service not being available could negatively affect the child's health.”

I have also attached a similar letter that I received from the Queensway-Carleton Hospital. Let me read one paragraph:

“It has come to my attention that you may be forced to close Sundays...thus not providing a 24-hour pharmacy service, seven days a week. This would be an unfortunate event if it did occur.... It would be devastating to learn that this valuable service would be taken away.”

I believe my colleagues across the province could produce similar letters of endorsement. My pharmacy would have to close if the size was reduced below 7,500 square feet.

Patients also rely on my pharmacy for more than prescription drugs. Most non-prescriptions and over-the-counter medication, such as antihistamines and analgesics, may only be sold by a pharmacist. They cannot by law be sold in any other retail establishment. Insulin is also a non-prescription drug, and last Sunday, August 25, my pharmacy sold 16 bottles of insulin. By the way, there are a multitude of new insulins on the market and not every pharmacy may necessarily carry all the different new brands. As you can appreciate, insulin is a life-saving medication for a diabetic.

**Mr Bloom:** Thank you very much, Bobbi.

I would like to add that Shoppers Drug Mart has four other 24-hour pharmacies in Toronto, and all are located near major hospitals. We are currently planning additional 24-hour pharmacies in other communities where there is the demand and the demonstrated need. If these pharmacies were to close midnight Saturday to midnight Sunday, there would be no 24-hour emergency pharmacies anywhere in either Toronto or Ottawa.

There is another vital service which many pharmacies offer on Sundays, and that relates to the supply of prescription services to nursing homes. If you close down such a pharmacy on a Sunday, the senior citizen would be unable to obtain an emergency prescription and would most probably have to be admitted to hospital. Besides the cost to the Ministry of Health, there are high stress factors relative to the patients and their families and to nursing care personnel. Shoppers Drug Mart pharmacists presently service approximately 5,800 nursing home beds throughout the province.

Our pharmacist-owner Gus Miller can give another perspective of how 2,400 square feet would impact health care services in the city of Oshawa.

**Mr Miller:** Thank you, David.

I have operated my pharmacy at Midtown Mall Shopping Centre in Oshawa for the past 22 years and have been open every single Sunday and most holidays since 1969. When the Retail Business Holidays Act was enacted, I reduced the size of my store from 10,000 square feet to 7,500 square feet in order to continue to serve my customers and also stay within the law. In the Oshawa, Bowmanville and Whitby areas, there are 27 pharmacies open on a Sunday. If that size is reduced to 2,400, there would only be six pharmacies to serve a population of almost 400,000 people.

I would like to pre-empt your question as to why a pharmacy needs 7,500 square feet in which to operate. The traditional mix of products in my pharmacy today is not very different from the products I sold when I started 22

years ago. The main difference, however, is in the number of items in each product category, commonly known as SKU, stock-keeping unit. For example, the number of antihistamines back then was limited. Today there are 10 times the number of formulations to relieve allergies, requiring an ever-increasing amount of display space.

Antihistamines are one of over 100 categories where new products and line extensions exist. All these require extra space. I think also Benylin, the old standby cough syrup, had one unit some years ago. There are now seven Benylins of slightly different formulation. Each one has two sizes. That is just an example. The many varieties and sizes of diapers that now require upwards of 36 linear feet of merchandise, every size and every brand has a category for girls and boys. The delivery of traditional pharmacy products and services requires an ever-increasing amount of space.

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The other difference today is the amount of medical information that pharmacists keep in their computers. I maintain a medication record for each of my patients in my pharmacy. Each pharmacy's records are independent. There is no centralized system, so, for example, I cannot access Bobbi Reinholdt's records. These records are essential in monitoring drug therapies and checking for allergies and interactions between medications. These records also include the patients' drug plan numbers for billing third-party plans like Ontario drug benefit, Blue Cross and Green Shield. If the patient went to another pharmacy, he would likely have to pay for his prescription out of his pocket if he could not produce his plan number.

An integral part of the pharmacist's role is patient counselling. This is especially important on Sundays when many doctors are unavailable and hospitals are overburdened.

**Mr Bloom:** Clearly the principal business of pharmacies on a Sunday is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes. This was the intention and the specifications of the current legislation.

In preparation for this presentation, we conducted a survey of total sales on Sunday, August 18, so it is very current. These results are based on 312 Shoppers Drug Mart pharmacies that were open that day. I would like to share some of the results with you, ladies and gentlemen.

We filled 10,031 prescriptions. Of these, 35% were for emergencies. They were prescribed by a doctor at a hospital or emergency clinic. Forty-one per cent of the total sales were for prescriptions and over-the-counter medication such as cough, cold and pain relievers and the like. A further 43% were for health and beauty aids, which includes first aid products such as sanitary products, diabetic syringes, bandages and ostomy products, items that only pharmacies would stock.

By limiting the size to 7,500 square feet, pharmacies are restricted in the nature and extent of product categories that they are physically able to stock; 7,500 square feet precludes them from devoting extensive sections of space to the non-traditional drugstore products such as clothing

and soft goods, automotive, gardening supplies and a major offering of food and the like.

I must add that of the 327 Shoppers Drug Mart pharmacies, there are 15—and I repeat 15—Shoppers Drug Mart Food Baskets, which are open until midnight and carry a very limited selection of convenience food items in approximately 500 square feet of space. Sales of these products, again according to the recent research, represent 1.27% of total Sunday sales. The prototype of 312 Shoppers Drug Mart pharmacies do not contain a Food Basket and do not sell food.

Given all the circumstances, the legislation selected 7,500 square feet as the appropriate size because it ensured the following:

1. Every single community throughout Ontario, rural and urban, will have adequate and accessible pharmacy services.
2. The size limitation restricts pharmacies by preventing them from offering a wide selection of non-traditional pharmacy products.
3. The legislation has created a model size for pharmacies of 7,500 square feet in the marketplace; many have increased their square footage and many have reduced their area to comply with the legislation.
4. The legislation is easily enforceable; square footage is a fixed criterion.
5. The Retail Business Holidays Act as it presently stands recognizes the unique professional services of pharmacists and enables them to remain on the front line of the health care delivery system.

Mr Chairman, ladies and gentlemen, on behalf of my colleagues, we thank you for giving us this opportunity to make the presentation. Hopefully we have clarified the situation relative to the pharmacy. We would be very pleased to respond to any of your questions.

**The Chair:** Thank you very much, sir. A couple of minutes per caucus. Mr Daigeler.

**Mr Daigeler:** Thank you for coming before us. I am wondering, though, are you appearing before us because you are worried that there may be amendments made that will in fact limit the drugstores to 2,400 square feet, and do you have any evidence to that regard? At the present time, the way the law stands, I do not think that is envisaged. Do you just want to make sure that there are no changes in that regard, or do you have other reasons for appearing?

**Mr Bloom:** The primary reason is we have been reading the transcripts and there have been some comments made by non-pharmacists suggesting that 2,400 square feet would be the proper size. We appreciate that is completely unfounded and would certainly jeopardize the health, safety and wellbeing of the citizens of Ontario. We have an exceptionally good health care system. As pharmacists we want to preserve it.

**Mr Daigeler:** Have you spoken with the minister at all? Has there been any indication that they would want to change the present draft legislation?

**Mr Bloom:** No, we have had no discussion with the minister at all. It is just that in reading the transcripts we felt that not appearing could sort of jeopardize the position



that is being held today, which we believe serves the public well, and that is to ensure the health care is available to all the citizens of Ontario.

Not that we thought the 2,400 would be necessarily justified, but we felt that if we did a survey that would be current with 1991 data, it once again proved that 2,400 square feet would jeopardize the health, safety and wellbeing. Certainly the two charts we provided you with substantiate that point of view.

**Mr Carr:** Thank you very much for your presentation and the statistics that were laid out here. I think that is very helpful.

Looking at it then—and I was trying to read the statistics there—basically what you are saying is on the Sundays you have got most of your business coming from the prescriptions. Is that the one on page 6 that you are referring to?

**Mr Bloom:** Prescriptions and over-the-counter drugs and health and beauty aids would fall within the definition that you have.

**Mr Carr:** Okay. With the numbers, if they did change them from the statistics, were they based on all stores or just your own stores?

**Mr Bloom:** It was strictly based on our own stores.

**Mr Carr:** Your own stores?

**Mr Bloom:** Right. That is a Shoppers Drug Mart piece of research and it was based on 312 Shoppers Drug Marts right across Ontario, basically every city and town.

**Mr Carr:** The other question I had was relating to the changes, why they would make some changes there. As you know, there was a lot of debate over the square footage that has been put in for pharmacies. Do you like where you are at with that now? Do you like to sort of leave things alone? Where are you at with it?

**Mr Bloom:** I think the research was quite intensive. I might attribute that to Susan Swift. The number was based on facts. It was based on preserving the health care system that we enjoy today. I would hope that decisions would be made on facts. In reviewing the data today, they do not differ much from the data Susan came up with, except for the fact there are more 7,500-square-foot stores today than there were in 1988. Many independents and chains have decided to move their model up to 7,500 square feet, and I would say that 7,500 is very consistent model throughout the province.

**Mr Carr:** This morning when the Canadian Federation of Independent Business people were in, that is what they said. Of course they were talking about all retail and all the members they represent. They said the worst part of all these changes that we are looking at is the uncertainty. I think, to paraphrase it a little bit, they said just make up your mind and live with it. Is your position as well that you would just like to have it settled once and for all?

**Mr Bloom:** We would like it to be firm and consistent. Mr Miller stated that he had downsized from 10,000 to 7,500 square feet. In 1988 when the changes were introduced and 7,500 square feet was to be the limit, our Shoppers Drug Mart owner-operators spent \$4 million

complying with the law. Also our owner-operators have leases and lease commitments on their size of store. Stability is the best thing for us as pharmacists. Our primary goal should be to deliver the best health care system in the province, not be part of this kind of process.

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**Mr O'Connor:** Thank you for coming here today. I was going through your presentation and I noticed that one of my municipalities was on the list here. Perhaps you could help me. The municipality that I am referring to is Stouffville and it is one in the southern part of my riding. It says that there is a total of three pharmacies, two open on Sundays. Total over 2,400 is two and total open on Sundays under 2,400 is one. They alternate, do they?

**Mr Bloom:** Yes, they alternate.

**Mr O'Connor:** Would it be possible for that to happen in all municipalities? It seems that they must have sat down and worked out a compromise that does not allow one, because there is a difference in size, an unfair advantage.

**Mr Bloom:** There is severe risk in alternating because, as I think was stated earlier, the patient record systems are exclusive to the pharmacy. There is no on-line system where your particular patient record system would be listed with three different pharmacies. If you were coming in to purchase an over-the-counter drug and you had prescription drugs at a particular pharmacy and you were taking cumidine, for example, which is a blood thinner—I am not wishing that on you—and you went ahead and bought Aspirin, Aspirin is contraindicated when you are taking cumidine. It could be fatal.

The pharmacist's role is to counsel patients. The Lowy commission, which was asked by the government to come out with some recommendations, has suggested in the strongest terms that the pharmacists have to get more involved in patient counselling to take some of the stress off the health care system. I believe it is the worst possible system to alternate pharmacies. They do so only if there is a lack of pharmacists involved. At Shoppers Drug Mart we do not do that.

**Mr O'Connor:** I tend to agree with that. The pharmacist is somebody the person in the community that is ill goes and talks to for some advice. Do you think it could be possible then that perhaps there should be some investment in this computer system so that information can be shared?

**Mr Bloom:** That would be absolutely illegal because those kinds of personal records cannot be shared, as you know. They are confidential records and they cannot be shared.

**Mr O'Connor:** You do not think that the patients then might take a look at that and think that perhaps in providing the health care they need for their own safety, that might not be a good idea? Do you think they would go against that?

**Mr Bloom:** Gus, you practise pharmacy on a daily basis. Maybe you would like to comment on the portability of records.

**Mr Miller:** There are without question a number of people that come in to my pharmacy. They know I have their history and they know I can look after all their needs. Frankly, I just cannot even consider the possible problems that would arise with my customers if I was not open.

**Mr O'Connor:** Could I put one more scenario to you? Right now in Ontario we have numerous problems, and one of them is drug addictions, and one of those addictions is prescription drugs. Do you not think if we had some sort of integrated system that perhaps that travesty would not happen, that we would not be putting people of Ontario at risk?

**Mr Miller:** We certainly encourage single-pharmacy shopping as we do discourage double doctoring to obtain multiple prescriptions for those types of drugs. Each area, and certainly in my Oshawa area, we have a telephone alert system that goes through the pharmacies within 20 minutes alerting of a possible fraud or overuse a drug. It is in place right now.

**Mr Bloom:** Could I ask Bobbi Reinholdt to comment? It gives you a different complexion by moving to Ottawa now, a different set of circumstances.

**Miss Reinholdt:** We have almost the exact same system. It is called the hotline, and it just kind of spreads out. The first store will get it, and you know your two or three contacts and you call.

**Mr O'Connor:** That hotline is exclusive to Shoppers' druggists?

**Miss Reinholdt:** No, no, it is all the pharmacies. Everyone is included under the local association.

**Mrs Cunningham:** Could I ask a process question, Mr Chairman?

**The Chair:** Yes. Perhaps we could allow the witnesses to leave first, please. Thank you very much for your presentation. Very articulate.

**Mrs Cunningham:** Mr Chairman, given that the concerns of the pharmacies across the province right now are not in response to Bill 115 but more in response to the delegations that have appeared before our committee with regard to size of drugstores, is it the intent of the government if it will be listening to the public hearings and making any changes in the size of drugstores, to have a different process so that they can more appropriately make their presentation? Normally, people respond to what is in a bill. If it is not there, they would not even be here, but because of the public hearings they felt it necessary to come and give their point of view.

Could I ask Mr Mills to take this as a concern to the government and say, "Look, if we are going to make these changes based on public hearings or if we are going to consider them, there ought to be an appropriate public process for those people who are affected"? Could I make a request that you as the parliamentary assistant take that forward?

**Mr Mills:** All I can say is what I have said right from day one, that these hearings are a process, we are listening and we are making note of everything that is heard. Other than that, I can take back that particular item you have spo-

ken of if that is what you wish, but generally we are listening to everything and taking everything into consideration.

**Mrs Cunningham:** My point is that most of the public response we are getting is not in response to the bill itself.

**Mr Mills:** Yes. This is a little different.

**Mrs Cunningham:** The response from the drugstores is different from the response of other persons coming before the committee. I expect many of us will be listening to changes in the bill that in fact relate to the specific clauses in the bill or the regulations, and others will not. I guess drugstores will not, and I have to say that I am in a major conflict in the way I think right now, because one of the recommendations we have been hearing is that all stores that open on Sunday ought to be 3,500 feet or 2,400 feet. We have all been hearing this. Noone has said, "Except those stores that are exempted by regulation now." So I am just sending it out as a caution to the great people who advise you, Mr Mills—you know how I feel about that from time to time—that if we are going to change in any way, there ought to be a more fair process for changing people who did not think they would be affected. All right? That is just my point on process.

#### ONTARIO DISCOUNT DRUG ASSOCIATION

**The Chair:** We now have a presentation from the Ontario Discount Drug Association, Mr Marv Turk and Mr Zel Goldstein.

**Mr Turk:** My name is Marv Turk. I am the president of PayLess Drugs. This gentleman is Mr Zel Goldstein, the president of Hy & Zel's. We represent the Ontario Discount Drug Association, which ostensibly are those drugstores over 7,500 square feet. We number 35, with approximately 3,000 employees, and the volume of business that we do in our stores is in excess of \$325 million.

We come to the committee today to ask for one thing, the removal of that clause in the proposed Bill 115 which restricts drugstores over 7,500 square feet from opening. In other words, we are asking for a level playing field where all drugstores can be open on a Sunday if they so choose and/or marketplace conditions dictate that eventuality.

Obviously, some of the ideas I have are going to differ from my friend, Mr Bloom, in terms of the focus I would like to talk about. Mr Bloom focused on the professional end. We would like to focus on the professional end, fairness as well as pricing.

We are basing our request for an exemption on three points. The first one is fairness. I wonder if anybody in the committee, or if all members of the committee are aware that in fact Bill 113, as it exempts drugstores over 7,500 square feet, only exempts 3% of the drugstores in Ontario. I also wonder if the committee thinks it is fair that only 6% of the people who are still working on Sunday represent a very small percentage of the people, if we look at the basic principle the NDP espoused for Bill 115, a common pause day. It does not make much sense to us that 6% of the people are allowed to work while 94% are not allowed to work. In terms of the common pause day approach, obviously the government of the day, or certainly the committee,



has taken pharmacy and has said it is an essential service and an essential part of the health care system. That is why they have not dealt with pharmacy in the position from Bill 113 as it applies to Bill 115. We agree with this. We feel pharmacy is an essential service and accordingly we feel that all pharmacies should be essential service and there should be no discrimination at that level.

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We also feel it does not make much sense that on the west side of the street you have a drugstore that is 7,500 square feet and allowed to be open and a drugstore on the east side of the street over 7,500 square feet forced to close, given the fact that you can purchase exactly the same range of merchandise in the store under 7,500 square feet as you can in the store over 7,500 square feet.

In 1989, the Retail Business Holidays Act, Bill 113, was passed and there was a year's exemption given to the large, over-7,500-square-foot stores to go to regional municipalities and ask for an exemption to have those large stores open. But to tell you the truth, we did this and we did not receive a very kindly reception because of the tremendous amount of anger that was directed against the government of the day. The municipalities felt they were being foisted with this additional responsibility. Sunday shopping was being applied to them and they certainly did not want it, so we were not successful.

In February 1989, Bill 113 was passed. The year's exemption expired at the end of February 1990. At that time the Hy & Zel's company had to make a conscious decision whether it should close or remain open. They decided to obey the law and stay closed. From March 1 to July 30 of that year until Bill 113 was temporarily overturned in the Pilkey decision, they were closed.

In the financial statement that was taken off in January 1991, the Hy & Zel's operation went from a profit in the previous year of \$1.5 million to a loss of \$4.5 million. That is extremely significant because what we have is forensic evidence which shows that our stores are not viable without Sunday, and it shows as well that the total loss of the \$4.5 million can be directly attributed to the lost business on Sunday. Even though Hy & Zel's opened earlier in the morning, closed later at night, opened earlier and closed later on Saturday, it was only able to retain 10% to 12% of that business. The observation is quite simple: the people who wanted the merchandise, prescription drugs, etc, on a Sunday were going to those stores that were open, which are the under-7,500-square-foot stores and we feel this innately unfair.

We are prepared to give this forensic evidence, which shows our non-viability which is obviously extremely important to us. By submitting this type of information we are exposing ourselves to our bankers and our suppliers and, unfortunately, we are probably going to have a lot of negative feedback from this. But the bottom line is that if we are forced to continue to stay closed on Sunday—some of our members are closed and some of them are not, in defiance of the law. I might add—we are going to be out of business anyway, so I guess a little more aggravation is not going to matter much.

With regard to the issue of whether our large stores are drugstores, I would like to make a couple of comments. First of all, not only are our large stores drugstores, they are superdrugstores. We carry esoteric products for various types of diseases like sprue, Epstein-Barr, hypoglycaemia, which none of the smaller, under-7,500-square-foot stores carry, for two very good reasons. Number one, they do not have the space and, number two, they could never get the dollar return on dollar investment or the proper turnover to stock these items and they unfortunately run their businesses much more as a business than we do. We run our businesses much more as a pharmacy, although that might be strange to some people who are sitting around the table.

We also feel that Bill 113, as it was presented, really provided an overkill. The fact of the matter is that most of the information in Bill 113 on the criteria on which a drugstore is based is very solid. It comes from the 1898 Pharmacy Act, goes all the way through the 1931 Pharmacy Act and continued to the 1976 Health Disciplines Act and the 1976 Retail Business Holidays Act. The major component of that particular paragraph was and still is that the principal business of the pharmacy must be the dispensing of prescriptions, pharmaceuticals, cosmetics, drug-related items, health and beauty aids, etc.

The reality of the situation is that our big stores do 75% to 80% of their business in this type of merchandise, although most people do not understand that. We do it obviously at prices significantly lower than the competition. In the sense that we were misunderstood and people were taking shots at us and saying, "You're not a drugstore, you are a food store camouflaged as a drugstore," that information was completely erroneous. There were no data to support that whatsoever.

As I say, in terms of what we are and who we are, we fill on average twice as many prescriptions as your average Shoppers Drug Mart—I mention them because they were just here—and on a Sunday we fill three times as many prescriptions as they do in an average store if we are allowed to open up against them. Obviously, people do not perceive us to be a food store, they perceive us to be a drugstore and the reality is that we are a drugstore.

The significant part of the fairness aspect relates to what the words "principal business" mean. We say we are a drugstore. Principal business means fundamental truth as well as majority or main. In every respect we can prove we are drugstores because the fundamental truth of our business is drugstores.

The second point I would like to mention is pricing. The average dispensing fee in our stores, again as opposed to my friends at Shoppers Drug Mart—since they chose to take a subjective position with this I think I will take a few shots at them. The average dispensing fee in our stores versus the Shoppers Drug Mart stores is between 20% and 40% less, a significant amount of money. The 35 ODDA stores fill, on average, 2.5 million prescriptions a year. This means that the differential in dollars to the public, whether they are going to have it or not if they come to our stores versus Shoppers Drug Mart, is in the neighbourhood of \$7 million, a significant amount.

In a recent survey taken at Hy & Zel's at the end of May, there were 940 drugstore items taken. Of the 940 items, over 90% were cheaper in a combination of PayLess and Hy & Zel's. The range of cheapness was between 5% and 35% or an average of 20%, a significant amount of money in recessionary times. Shoppers Drug Mart was cheaper in 2% of the items. That is not to say if they are in a flyer they are not cheaper, etc, but these are everyday prices, so obviously the pricing is extremely significant.

I would like to just mention one thing about cross-border shopping and I will be very brief. We all know, of course, all the variables that contribute to the problem of cross-border shopping: the high interest rates, the high Canadian dollar, the GST, free trade, etc, but I have not seen very much come from any government in terms of a positive approach.

Our stores, Zel and I and the people in our association, are really not concerned about competition, we are more concerned about the government closing us up. If we were able to pursue our business agenda, our marketing strategy and have our stores open and advertise it properly, we feel we could keep a lot of that kind of business in Canada. Of the total amount of cross-border shopping, 30% is done on Sunday; 7% of that business is in drugstores and drug-related items. I am not naïve enough to believe that we can take all that business and keep it here, but if we could take 2% or 3%, does that not mean jobs and extra taxes? Does that not show a different type of mindset that we have had in Ontario in the last couple of years and get rid of some of that negativity?

I have a letter here from a lady in Mississauga which will be distributed to you people, where she is absolutely incensed at the fact that Dixie Hy & Zel's was closed and she had to go to Shoppers Drug Mart where she states she paid twice as much money for the item. She is bashing all levels of government and saying they should be involved. The only point I want to make is the fact that in this day and age it is obviously extremely relevant and very important to most people, especially those with a lot of kids, not to have to pay more than they can afford to pay. You can read this letter.

The third and probably the most important point I would like to mention is jobs. Because of our non-viability, because of the fact that if we are not allowed to be open Sundays, we will effectively lose 3,000 jobs, our co-workers and people who worked with me for up to 20 years and with Zel's for up to 12 years are going to have to find different places to work. In terms of the Sunday shopping as it applies to our staff, 90% of the people who work for us are part-time university and college students or people who already have work five days a week who just cannot make it and require the extra day of work to pay their bills.

Sunday is the easiest day of the week we have to fill staff-wise. So the question is not necessarily who would want to shop on Sunday in the drugstore, but who would want to work on Sunday in a drugstore? The question is academic because it is not a problem for us. People want to work on Sunday and we just do not have that problem.

The situation that presented itself in Kapuskasing a couple of weeks ago where Mr Rae interceded and 800 jobs were saved is very commendable and I think the government should be doing more of this. However, that was 800 jobs. What we are saying to the government now is if we can prove to you, and I am sure the forensic evidence will prove, we have 3,000 jobs at stake, I think we deserve the same type of considerations as those people up in northern Ontario. Again, I am not dictating or threatening, I am stating the facts.

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As well as that, I would just like to make an off-the-cuff comment that I am a hands-on sort of a guy. I am a general manager rather than a president. I attend all the pay equity meetings and workplace safety meetings, and I must tell you that the question that has come out of five months of pay equity meetings has not been at all, "Since we have been maligned and taken advantage of all these years, are we going to get more money next year or the year after that?" Although we take it as a very serious issue, the question that is being asked is, "Are we going to have a job next year?" I have to be very candid with these people and I cannot really tell them they will. I think that is rather sad; everybody will admit that if that happens it really is sad.

I would like to turn the mike over to Mr Goldstein for a second. He has a couple of comments he would like to add.

**Mr Goldstein:** I would like to present to the committee these petitions which were collected in my stores over the weekend. Our customers want to shop in our stores. Almost 15,000 petitions are here and more will be collected in the coming weeks. I will make sure that when we have them in hand, we can deliver them to you as well. They are all here packaged in boxes. I can pass them around to you if you want.

**Mr Turk:** I would like to pass the meeting back to the Chair. If there are any questions anybody has of myself or Mr Goldstein, we would be pleased to try to answer them.

**The Chair:** It might be helpful actually for the committee's purposes to have a sample of those letters so we know what you are referring to. We will pass them back to you.

**Mr Sorbara:** Let me apologize to both the presenters and my colleagues on the committee for being a little bit late this afternoon. I just have a couple of questions for the presenters. The first relates to what I understand to be the major thrust of their submissions before the committee. That is, if I understand it correctly—and do correct me if I am wrong—that clause 3(2)(c) of the act, as it currently stands, discriminates against your stores and your type of stores only because of an arbitrary qualifier of 7,500 square feet.

**Mr Turk:** That is exactly correct.

**Mr Sorbara:** It is my impression from Shoppers Drug Mart and others that they are not particularly interested in maintaining the 7,500-square-foot qualifier, although as an accidental, if you like, effect of this section, most of the



stores of the kind you are speaking about are required to be closed and they are permitted to stay open.

**Mr Turk:** I think if the question was asked of Mr Bloom or any of the principals at Shoppers Drug Mart whether they would go for an all open or all closed situation, the answer would be undoubtedly all open.

**Mr Sorbara:** That is, to let the marketplace determine what size of store best suits the shopping public on a Sunday.

**Mr Turk:** That is correct.

**Mr Sorbara:** I suppose you are aware, because you have very competent advice on this matter, that as a very technical matter, the clause I refer to, clause 3(2)(c), is not currently under consideration by this committee, and that it would require unanimous consent of the committee, that is, the permission of the government, in order to proceed with an amendment to this section. Are you aware of that?

**Mr Turk:** We are aware of it and we hope the government of the day will understand the necessity in this economic climate to do this.

**Mr Sorbara:** All other matters aside—that is to say the tourism matters as they are set out in the bill and the qualifiers in the bill as to how one goes about receiving permission to open on Sunday under the proposal of the government, which is an application to a municipality and public hearings and then the discretion of the municipality—is it your view that an amendment to clause (c) would create a fairer marketplace for competitors that should be playing on a level playing field under this act?

**Mr Turk:** I do believe so, because I believe you cannot consider a level playing field in other than the specific industries or professions involved. My personal opinion is that the previous government made an error in trying to negate people they assumed to have a leg up, and trying to compare food stores, department stores and drugstores. I really believe you cannot do that.

**Mr Sorbara:** You make a very good point because the error, if there is an error in this section, is the error of a previous government. It is possible that an incumbent government could correct the error even though, once again, it is not strictly within our mandate.

The product line you have in your stores generally—I guess they vary; you two guys are competitors—is it the same as, similar to, different from, very different from, or wholly different from most drugstores that open on Sunday as a result of this 7,500-foot qualifier?

**Mr Turk:** It is very similar. The major difference is in the number of stock keeping units, SKUs. The gentleman commented on that. We have a 42-foot first aid section and the average for Shoppers is 12 feet. The average for Pharma Plus is 8 feet. So we have 600 items in that area and they have 200 items. We have a very strong and high service level and they do not. They have a high service level in terms of what they are trying to do. We have a high service level in terms of the total picture of the health care system, and that is really what we are.

**Mr Sorbara:** If an individual buying a prescription for the very first time goes to a drugstore and buys a prescription, say, at store A, what is the likelihood that the

next time he or she needs a prescription he or she will return to store A rather than go to store B?

**Mr Turk:** Almost 90%.

**Mr Sorbara:** So if I buy at store A on Sunday and if the next time I get a prescription it is a Tuesday, I am likely to return to store A?

**Mr Turk:** Absolutely correct.

**Mr Carr:** Thank you very much for a fine presentation. You may know that one of the presenters yesterday brought some information in to compare yourselves with their grocery store. Listening to the banter, it is nice to see that the free enterprise system is working and that the business community is having as much fun with the odd little shot at each other as we in the political field do.

In fact, when I look at some of the comments on the petitions here, it is interesting what some people are saying about the government on this. The first one just happened to be here. I will not repeat it because the lady probably will not want me to say it, but it is interesting that any time you do something as politicians you get a comment, and there is an interesting one right here.

But my question is on a more serious note, because I think somewhere—

**Mr Sorbara:** Than whose question? Than my question?

**Mr Carr:** Than my little bantering. It is a serious question because I think you said in the neighbourhood of about 3,000 jobs are in jeopardy if you are not allowed to open up. I am always reluctant to dig into financial details when it is public like this, but maybe you could just expand on that because, as you know, most people in this day and age are concerned about jobs. If you are not allowed to open on Sunday, what happens to a lot of those jobs?

**Mr Turk:** We lose 50% of our business. The business is not recapturable, because people will buy all those products that we sell in an under-7500-square-foot store. Mr Bloom made light of his Food Basket, etc, and the fact that they are only 500 square feet, but the reality is that in the 500 square feet they sell 90% of the food we sell. So the fact of the matter is that if somebody was in a Hy & Zel's and there was a Food Basket nearby, and Hy & Zel's had to close, they could go to the Food Basket, which has prescriptions and all your health and beauty aids, and get all the food they want. That is the reality of the situation. That is why we feel there is an inherent unfairness in linking anything to square footage. It makes no sense.

**Mr Carr:** Yesterday, even though your competitors were taking a little shot at it—and I was comparing the prices actually out of curiosity. I will not comment, because it was fairly different in all areas. They did their presentation with the United Food and Commercial Workers and at the end they agreed on everything except the 7,500 square footage. National Grocers was the company that came in and said that, if you are going to have it open, do not put that square footage in because presumably that company will be caught in it as well. They said, "We would like to remain closed, but if you do open up, let's make the playing field level and let's not put the restrictions." Is your big concern with this legislation the square-footage aspect?

1400

**Mr Turk:** Absolutely. That is the only thing we are asking for. The fairness could be returned by allowing us to be open, by allowing the 7,500-square-foot provision to disappear. We can fulfil any other condition of Bill 113 or any law that will be written in terms of pharmacy. We are pharmacies, we are drugstores; that is what we are. But the 7,500 has forced us to close and will put us out of business if we do not get some relief from that.

**Mr Goldstein:** When we went into business in 1980, there was no restriction at all on the size of a drugstore. It was only in 1989 that they changed the ball game there.

**Mr Carr:** I think my colleague has a quick question. No time?

**The Chair:** No, unfortunately not.

**Mr Carr:** Sorry, Dianne.

**The Chair:** Mr Morrow and Mr Lessard.

**Mr Carr:** That was my fault. I said I would leave her time. We gave Greg a little time.

**The Chair:** You were both over.

**Mr Carr:** Yes, it is not for me, it is for Dianne. I knew I would not get it for me.

**Mr Morrow:** No problem then. For Dianne, anything.

**Mr Carr:** Go ahead and get in a question.

**Mrs Cunningham:** This is great. I get a chance to ask you questions again. You must be really angry this time; you were angry last time. This time you must be really angry because we have a bill that says it is in support of a common pause day, which I do not believe it is, and it is going to open up everybody but you.

**Mr Goldstein:** That is right. It does not support the 6% of people that work in the stores over 7,500 feet.

**Mrs Cunningham:** Drugstores are the exception, so now you have got caught up in this other municipal option, but not for drugstores.

**Mr Goldstein:** Right.

**Mrs Cunningham:** Okay, I have a practical question, given what we have heard and given the fact that Mr Mills has assured us the government is going to be looking at all of the input. You heard my previous question about re-opening the discussions. In fact, if drugstores are going to be dealt with in any way separately, one of the things the government is going to have to think about if they are seriously looking at the size of stores now—which is something I think they may have to seriously look at since there was a lot of input to the committee on that.

One of the issues during the last round—and I do not know how people can do business in Ontario because there are too many rounds and changing laws and we have too many laws, but that is beside the point. In the last round we were looking at roping off and numbers of employees. There was a lot of input to that, not only around drugstores but around food stores that open on the weekends, vegetable markets and things like that. You had to operate, I think, with that rule at least for some period of time. I am not certain on that but I think you did. Is it something they should be considering?

Are you saying that cannot happen, or that it is not something one can implement or police or whatever?

**Mr Goldstein:** We tried to do that and as a matter of fact we did rope off the food and people were climbing over the ropes. They were getting into the food and they wanted to check it out. It is really not a very viable situation to rope off.

**Mrs Cunningham:** But would it be a compromise?

**Mr Goldstein:** It would be a compromise and that is a compromise we would be willing to make.

**Mrs Cunningham:** What about numbers of employees? Did you have to deal with numbers of employees as well? Can you tell us what your experience was there? The province of Manitoba does that now.

**Mr Goldstein:** The service level would become very low, which in turn would create chaos in the stores, because if they are not getting served properly they are just going to drop their items and walk out of the store.

**Mrs Cunningham:** Again, I am just posing it and getting your experience because it may in fact be a compromise factor. Right now, there has been absolutely no discussion around opening large drugstores.

**Mr Turk:** The number 8 would make sense. The number 4 does not make sense.

**Mrs Cunningham:** Okay, that is the kind of stuff we are looking for. We are here to help the government solve their very large problem, that they promised a common day of pause.

**Mr Turk:** The difficulty, as we see it, is that a drugstore is a drugstore is a drugstore. What is the difference about the size? What should be important is that they can conform to the law and the regulations of Bill 113 which are set out. If that can be done, what is the difference about the size of the store? If we choose to have larger sections, and in fact do more business because our prices are lower, it makes no sense to put a ceiling on a particular industry like the drugstore industry because it is an impediment on what we are able to sell which relates to the business.

**Mrs Cunningham:** The reason for my question, Mr Chairman, is that if we do get into the size of stores in general, I feel the government will have to take a look at the big picture and that is a very difficult one for previous presenters who followed a new rule, and even this group that had to follow a new rule in 1989.

**The Chair:** Thank you very much, Mrs Cunningham. Thank you very much, Mr Goldstein and Mr Turk.

**Mr Morrow:** Excuse me. Do we not get to ask questions on this side, Mr Chair?

**The Chair:** You certainly would have the opportunity to ask questions if you would like to but we have run out of time. Are you proposing that we run on?

**Mr Morrow:** Can I ask the other two caucuses, can we allow brief questions?

**Mr Sorbara:** I would support unanimous consent just to provide the good members of the NDP with a little time. This is our last day, sir.

**Mr Morrow:** We will be really quick.



**Mr Sorbara:** If we go a little late today I do not think we are going to offend anybody.

**Mr Morrow:** Gentlemen, it is very nice seeing you.

**Mr Sorbara:** I want to say the good members of the NDP, Mr Chairman.

**The Chair:** Unfortunately it is Mr Morrow and Mr Lessard who will be asking the questions.

**Mr Morrow:** It is very nice seeing you again. I want to say thank you very much, and I will explain why I am thanking them very much. Last Saturday morning my wife and I walked into Hy & Zel's on Queenston Road and Highway 20 and, much to my amusement, there was a sign there that said, "It's only fair," and asked them to call their local MPP, Mark Morrow, and gave my phone number. It is the best promotional thing I had had in a long time and it was free. Thank you.

Just one quick question, if you do not mind. Is it possible for you to tell us the breakdown of pharmacy sales and non-pharmacy sales, or can you get that type of information to us?

**Mr Goldstein:** The information that we have is that 75% to 80% of our business is done in drug and drug-related items. In other words, if you were to compare a 7,500-square-foot store, the 75% or 80% would relate to the same type of items as they would handle in those stores. The other 20% would probably be the food aspect of our business.

**Mr Morrow:** Is that the same on Sundays?

**Mr Goldstein:** Yes.

**Mr Lessard:** I have a flyer that was provided to us yesterday when we were in Hamilton from Hy & Zel's and it is fairly detailed and has quite a few items in it. It has Polaroid blank tapes and it has milk and it has school supplies and Scotch tape and chocolate bars and candy and frozen food and soup and all sorts of food items in here. The whole back page deals with soft drinks. I do not know whether this reflects the sales you have in your store, but it would seem like it focuses heavily on things that are other than drugs.

I think your submission would have a lot more credibility to it if you said, "We want to compete strictly in the area of pharmacy," but what I am going to suggest to you, and you can agree or disagree, is that what you have done is found a loophole in the previous Liberal legislation and you have exploited it to the max and you are here because you are afraid that loophole is going to get plugged.

**Mr Turk:** First of all, we have not plugged any loophole; we are forbidden by Bill 113 to be open. We are not open. So I do not know what you are alluding to in that respect. Do you understand what I am saying? We are not allowed to be open now.

**Mr Lessard:** If it is up to 7,500 square feet.

**Mr Turk:** All our 35 stores are over 7,500 square feet, so we are not by law allowed to be open. In terms of the flyer, first of all, if you took a look at a Shoppers Drug Mart flyer, you would see a tremendous amount of school supplies, soft drinks, etc., as well. It is a marketing process. We do not expect—I do not mean to be disrespectful—

politicians to understand how to market retail operations. The reality is that what you see in there are some food items that we use to draw people in.

The reason we did that originally was because the food people used to do it with the drugs, so it was a reciprocal type of thing. We now find it brings them into the store, but it in no way, shape or form reflects the percentage of sales we have. We can prove this. We have documentation. So I do not think you should condemn us just because a flyer looks a certain way, because from what you are saying, you are not going to be happy with the Shoppers Drug Mart flyer either. And remember, the "Plus" in Pharma Plus is not drugs.

Again I just want to make that point to you, that the flyer does not represent the percentage of sales of our products, not in the least. As a matter of fact, they did the back page because they got \$50,000 from Pepsi. That is the reason they did it, not because they sell a lot of Pepsi.

**Mr Goldstein:** I think we should focus on the 3,000 jobs that might be available if we are forced to close on Sunday. I think this is the issue today, the viability of the company and the 3,000 jobs that could be available if we are forced to close. Regardless of these ads, 75% to 80% of our sales are still done in drug and drug-related items.

**The Chair:** Thank you very much, Mr Goldstein and Mr Turk.

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**Mr Sorbara:** Can I just raise a point of order arising from a response that was provided to us by the ministry?

**Mr Fletcher:** Greg is back. We have not had you for three days.

**Mr Sorbara:** Yes, I am back. You are right.

On Monday of this week, Mr Chairman, I asked that the Ministry of the Solicitor General provide us with a working definition of the phrase "common pause day" as it appears in the legislation. I also asked whether the ministry was prepared to make a proposal to include a legal definition of "common pause day" in the bill we are considering. The reason I did that is because the whole thrust of this bill is to achieve, at least in the view of the government, a common pause day on Sundays and other holidays that are enumerated in the Retail Business Holidays Act.

The answer that we received today did not get the question right. The question as reported here is "Shouldn't there be a definition of a common pause day?" That is not the question I asked. That was not my request for information. Even worse, the answer just goes on to restate the government's position about hoping to bring about a common pause day through its legislation. I think the government has the right to try and effect a common pause day on Sundays and holidays as defined in the act. My problem on this committee is I do not know what they mean by that in a practical sense and I do not know what they mean by that in a legal sense.

Once this bill is passed, councils in every municipality are going to have to try and maintain a common pause day if they are presented with an application to open on Sunday. I believe that requires a legal definition of "common pause day" and I believe we should be having a discussion

here. I would like once again to put my request, those two requests, to the ministry for an answer. If they choose to say, "We prefer not to answer that," I accept that but getting the question wrong and then not even answering the question that they got is simply not acceptable.

**The Chair:** Thank you, Mr Sorbara. I hope, as you are suggesting, that at least the question will be properly recorded and I know you would appreciate a response.

**Mr Sorbara:** I hope so too.

#### TOWN AND COUNTRY

**The Chair:** We have before us Bonnie Brooks, the chairperson of Town and Country. I apologize for the delay, Ms Brooks. We have approximately half an hour for your presentation and for the many questions which I am sure the committee members will have for you. Please proceed when you are ready.

**Ms Brooks:** Thank you very much, Mr Chairman, for allowing me to present today. Like my colleagues—I believe some of the others from Dylex specifically have spoken over the last few weeks—we think anything we can do to further develop a relationship between the government and businesses in Ontario is important.

I am the president of Town and Country stores and I am new to Dylex; I have only been with Dylex for a year. I was with Dylex all through the 1970s and through the 1980s I was with Holt Renfrew.

Town and Country is a ladies' fashion business that has been in business for 27 years and in the last couple of years has suffered dramatically, primarily in Ontario and primarily in 1990 and 1991 so far, largely due as well to the recession.

There are 165 stores across Canada from Newfoundland to Victoria of which 101 are in Ontario and 18 are in border markets, specifically border markets in Ontario. The customer profile is a working woman 35 years of age or over. Our average customer age at this point is 47, a very middle income customer.

Our employee profile is somewhat similar to our target customer. Some 99% of our employees are women and we employ over 900 women in Ontario. The ages of the women we employ are primarily 35 to 65. Some are over 65, middle income again. Many of them are single parents. Many of them are widows and empty-nesters.

It is difficult to find good sales associates. We treat our people very well. We provide them with incentives and we provide them with a level of superior training, we believe, and develop our people to grow and be successful.

Our product profile is very much career clothes, updated in classic fashion at very affordable and what we feel are smart prices for the 1990s. We have recently changed our pricing philosophy for a number of reasons. There has been a 13% decrease in sales in 1991 to date versus 1990 in Ontario this year. The Ontario stores are suffering. Sales in the western provinces and in the eastern provinces are in fact equal to last year, so it is not a company-wide problem; it is an Ontario problem.

The revenue on Sunday is approximately 8% of the weekly sales of the store, as demonstrated both by the provinces of Alberta and British Columbia currently and

Ontario when we were open in Ontario in the spring of 1991. Our conservative estimated lost revenue in 1991 in Ontario on Sundays will be about \$3 million. The revenue loss to border shopping could be estimated at a much higher number, as much as \$6 million.

Our capital reinvestment in Ontario in 1990 was \$3.5 million versus our reinvestment in Ontario in 1991 which will be basically nil or perhaps as much as \$500,000, but certainly not the \$3.5 million as in the past, because, of course, we invest in our successful areas only. Decreased capital investment over the next five years as a result of non-growth in Ontario equals 150 lost jobs at approximately \$2.9 million a year and 25 new stores over the next five years which will not be developed at approximately \$17 million in sales and approximately \$10 million to \$12 million in construction costs alone that will not go into Ontario.

There is a high degree of competition in the market segment of women's wear, as I am sure you know. We feel that a lot of our business is going south of the border on Sundays. The department stores in the States, Buffalo, etc, carry much larger inventories than the department stores in Ontario and there are a larger number of specialty stores all catering to the same customer, with a similar type of product.

The retail price in the United States in many cases is cheaper due to the dollar duty and the tax structure applied to our cost price. The selling margins are exactly the same in the United States as they are in Canada, according to all the statistics we have from the Retail Merchants' Association of Canada. Those statistics have been supplied for a number of years, and most of us subscribe to that service. However, of course, the profit margins for us versus the Americans are much different. They are poorer for Canadian retailers, and that is largely due to a difference in occupancy costs.

Our inability to open on Sunday is a major concern. Obviously, the incidence of cross border shopping is of concern, and our 18 stores that are on the border in border market malls have been the hardest hit. Sales there are down by as much as 50%.

It appears Sunday is becoming a favourite family shopping day for Canadians. Perhaps it is one of the only shopping days for Canadian families. But the Canadians that are shopping on Sunday that live in Ontario are not shopping in Ontario. Canada Customs has estimated a year-by-year increase of 2 million people per year crossing the border. The size of the lineups make it obviously impossible to enforce the law. The season-to-date statistics from the Business Week article on June 24, 1991, show a 22% increase in border traffic.

The business is not being done all at off-price outlets. We do not believe it is price that is driving the consumer south of the border. US retailers are scrambling to expand along the border. There are 16,000 Canadian customers who have credit cards with Bonwit Teller, a very upscale department store in Walden Galleria Mall in Buffalo. It is a regular-price shopping centre which claims to be the number one volume store in sales volume for every major US chain that is in there. It is not a discount mall. When we



find that 16,000 Canadians have Bonwit Teller credit cards, they are not going to the States to shop for price.

1420

The Ontario government has estimated cross-border shopping will cost border towns in the province 14,000 jobs this year. We feel that some of the shopping centres in the border towns in Ontario have changed their format in terms of their retail format and slashed their prices to become discount operators to try to compete with the traffic that is going to the States. At Town and Country in 1991, we adopted this format as well in some of our border towns, but it is not a format that is sustainable long-term, certainly not for us and, I do not believe, for others either.

Our store managers who are working women, many as supporters of families, single-parent households, ask why they are watching the traffic on Sunday in markets like Welland and Fort Erie and Sarnia, literally lined up for miles and miles, and they are sitting closed in their stores and unable to open, with their store revenues down by 50%.

As an employer, we support the proposed amendments to the Employment Standards Act. We can guarantee the 36 continuous hours of rest in a seven-day period, the absolute right of employees to refuse to work on Sunday and the strengthening of our own human resources' abilities to deal with any grievances should they occur.

Our specific situation is very different perhaps from some of the other Dylex divisions. Several retailers, like Thriftys—I know you heard from Thriftys this morning—are employing students, and Sunday openings would provide the students additional income opportunity. In our case, our employee base is mature women, including widows, empty-nesters, etc. We have examples in our other provinces, where we are open on Sundays, of many employees actually requesting Sunday hours because they do not want to be home alone on a Sunday afternoon.

Believe it or not, the traditional Ontario family unit at home together on Sunday is not the reality of our customer base and it is not the reality of our employee base, according to our facts and our research. Single women find shopping and working two of the only activities they can do alone. Our society does not allow for dinners at restaurants and movies or attendance at social events and lots of other things for single women on their own, and I can speak to that. I have done a tremendous amount of travelling myself as a single woman in other cities, whatever, lots of times on the weekends, where I cannot be with anyone I know because I am in a strange town. There are absolutely very few things you can do, except perhaps some galleries, on a Sunday alone. Even eating out, as you may know, for women is really difficult in the early evening alone.

We would like to propose a Sunday opening amendment to cover the period from Thanksgiving to Christmas. The Christmas shopping period is the most significant in women's retail—in many fields of other retail as well—and accounts for up to 45% of the entire year's business. This year, many Ontario retailers will be out of business by January if we do not make changes to the current operating environment. The retail stores in Manhattan in New York, for example, for several years, as far as I can remember—

and I have been going to New York on business and on weekends for more than 20 years—are always open on Sunday from 12 to 5 throughout that Christmas period, but they are not necessarily open—and in fact I do not believe they are open—during the year for any other consecutive Sundays.

The Ontario customers are clearly telling us they will shop on Sunday. At Town and Country we believe that certainly some of them would like to shop Canadian. Retail is a service business. It depends entirely on meeting the needs of today's consumer, who is time-pressured and price-driven, but we fear that the situation is escalating at an unacceptable rate, and that if we all do not try to do everything we can to stop the erosion of our business, there will be businesses this year that will not recover. Quite frankly, we need your support.

**The Acting Chair (Mr Fletcher):** Thank you, Ms Brooks. We will have approximately five minutes per caucus. We will start off with the Liberal caucus.

**Mr Sorbara:** Ms Brooks, I think your presentation stands as an excellent example of why restricting stores on Sunday, or restricting the market to stores which cater to the so-called tourist, is probably not well advised as a matter of public policy. I did not know that Town and Country catered to clothing for working women, but that is the case and you see a great potential to solidify your market on Sunday, that says to me there are a lot of working women out there, probably with children, sometimes with husbands, sometimes alone, who look particularly to Sunday afternoon as an opportunity, with or without children, with or without husband, to be shopping.

**Ms Brooks:** Absolutely correct.

**Mr Sorbara:** If that were not the case, you would not be so anxious to open your store. Is that right?

**Ms Brooks:** For our stores that have been open on Sundays in the past and certainly are open in the other provinces currently on Sundays, Sunday is a very exciting and fun day. It is not the same as a Saturday where everybody is in such an unbelievable rush, and it is not the same as weekdays because, for working women's businesses and there are many, many businesses in Canada that are working women's businesses; we are certainly not the only one—the traffic is really non-existent on Monday, Tuesday, Wednesday, Thursday and Friday during the day, except perhaps at lunch-hour or in the evening between five and six or seven, because most people have other responsibilities during the evening, preparing meals, whatever it might be.

Those of us in the room who are women know what that is like. Shopping is not considered a negative activity on a Sunday; it is considered fun. They can do it with their families if they have families. Many do not.

**Mr Sorbara:** As far as you are concerned, the ability to ensure that you have a workforce available to work on Sunday would not require the kind of coercive tactics that some people have accused some employees of.

**Ms Brooks:** I find it really interesting that people coerce people to work today.

**Mr Sorbara:** I find it downright fraudulent.

**Ms Brooks:** We have a very difficult time finding good people, and when we find good people, we do everything we can to keep them happy, literally.

**Mr Sorbara:** So if someone said to you: "Yes, I would like to work in your store. By the way, I generally spend all day Sunday at church services and then at grandmother's," you would say: "That's fine. We can arrange your schedule so that you won't need to do that"?

**Ms Brooks:** Absolutely.

**Mr Sorbara:** You do not oppose then the employment standards provisions of this bill?

**Ms Brooks:** No, we support it 100%. Plus we are prepared to have our human resources offices across the province geared up for any grievances. It is not a problem, I do not think, for any retailer.

**Mr Sorbara:** You are supporting and endorsing a recent proposal from Dylex to amend Bill 115 so that any business could stay open between Thanksgiving and Christmas. Is that right?

**Ms Brooks:** Yes.

**Mr Sorbara:** How will that affect your market? It will not deal with the working woman who wants to buy clothes in May and only has Sunday.

**Ms Brooks:** No.

**Mr Sorbara:** So why this proposal?

**Ms Brooks:** Because such a large percentage of the retail business is still done between October and Christmas. Generally fall clothing is a somewhat higher price point than spring clothing, so your fall swing—the percentage of fall business is always larger than the percentage of spring business—the percentage of business done in those three months makes a difference as to whether you make or break the year. For many of us in retail in Ontario at this moment, it will mean the difference between whether we are still here in January or not. It is not a pretty picture.

**Mr Sorbara:** Is it the case that we could actually try the Thanksgiving to Christmas proposal for a couple of years and see whether it messed up the common pause day or screwed up family life or destroyed the quality of living in our communities, and if the evidence was in a couple of three years that doomsday did not arise as a result of Sunday afternoon shopping before Christmas that maybe we could expand the experiment somewhat?

1430

**Ms Brooks:** We test everything in our business, and I think everything is worth testing.

**Mr Sorbara:** And this would be a good test.

**Ms Brooks:** Absolutely.

**Mr Carr:** I was struck by one statement where you said that some of the people were watching the people go across the border while they could not work. We used to have a saying in hockey that you cannot win the game if you are watching the scoreboard. You cannot spend time watching the scoreboard, you have to be out there at least

trying to play, although I am here because I did not play too well.

A lot of people have said there is not any more money to be spent than if you are open Sunday. The money will not be spent. There could be an argument that somebody might go to dinner in a restaurant and if there was Sunday opening they would not spend it on the dinner and restaurant; they would now spend it in your area. Would you like to comment on that aspect of it? I know there are such things as point-of-sale marketing where you put the candy bars as people go out the checkout because if the candy is there at point of sale they will impulse-buy. Maybe you could just comment on where you see the money coming from to purchase the goods.

**Ms Brooks:** I think it is twofold. First of all, in the early stages when we were open in other provinces, there was not necessarily a substantial increase in business. There was a change in the days of the basic business revenue, and obviously more to Sunday.

But what we feel is starting to happen is that there are two problems: number one, the border problem, which I know is an ongoing problem and not the one of this committee, but it affects the Sunday issue greatly when stores like Bonwit Teller, which are very upscale department stores—these are not discount stores—are benefiting from Ontario customers to a huge degree, not to a small degree. It is alarming. The other is that as a working woman's time becomes more and more and more pressured, the amount of shopping hours diminishes. Probably the concern is still there in terms of having a working career wardrobe, but women will not shop as much for themselves if they do not have time.

**Mr Carr:** Al has a question.

**Mr McLean:** I just have a bit of a problem here because I see Price Clubs and I see all kinds of stores open on Sundays. If they are open, why do you not open? Nobody seems to be doing anything about it. Is there a reason why? Are these price clubs allowed to be open on Sunday?

**Mr Mills:** No.

**Mr McLean:** Why are they? Who is doing anything about it?

**Mr Mills:** There are only so many policemen to go around.

**Mr McLean:** As we have it today, all kinds of stores are open on Sunday. This legislation could carry on for a year before anything is done. You will be out of business because you cannot open, so you think. All these other businesses here are now opening and reaping the profits because you cannot, so you think. This is really a comment, because you cannot answer the question. I want an answer from the Solicitor General's office as to why price clubs and these stores that I see are open on Sunday.

**Ms Brooks:** We are a traditional retailer, so we cannot.

**Mr Mills:** It might be the proper context to answer that there are hundreds and hundreds of people who speed up and down the 401 every day who are not apprehended. Take that one step further into the shops. There are only so many police and so many things to go around. If someone



sees a store open and likes to complain to the police about it, I would imagine that upon complaint they would take action.

**Mr McLean:** But you know about it in the Solicitor General's office. Why are you not doing something about it?

**Interjection:** Why don't you ask the witness a question?

**Mr McLean:** I think it is important that this witness knows what has taken place in the province with regard to other stores being open and we are saying that she cannot.

**The Vice-Chair:** Mr McLean, please, we do have a witness here. If you want a clarification from the PA, you might be able to do that afterwards.

**Mr McLean:** I think it was a pretty good point.

**Mr Carr:** Mr Chair, any time left?

**The Vice-Chair:** You have approximately 30 seconds left, so please make it really fast.

**Mr Carr:** Very quickly, your stores are under 7,500?

**Ms Brooks:** We are definitely under.

**Mr Carr:** Okay. With the tourist exemption, there is a chance that you might be able to open. Do you think you will be able to open because a lot of the areas will be under tourist exemptions?

**Ms Brooks:** No, many of our areas will not be tourist exemptions. They will not qualify as tourist areas.

**Mr Carr:** Thank you. Good luck.

**Mr O'Connor:** Thank you for your presentation. I have just a few questions to try to bring some profile to this. Your customers you have talked about are working women. What kind of work would they do? Are they kind of upper-scale or would they be like the ones in grocery stores or cleaning?

**Ms Brooks:** Some of our employees are employed in the retail industry, many are employed as clerical functions and some are in middle management, in banking institutions.

**Mr O'Connor:** So minimum-wage women would be some of your clients?

**Ms Brooks:** Absolutely.

**Mr O'Connor:** That is nice. You mentioned the cross-border shopping issue. Of course we are trying to separate the two because they are different.

**Ms Brooks:** I know. I understand that. I have a difficult time separating them myself, because they are things—

**Mr O'Connor:** Would it be fair to say that less than 20% of your stores would be affected?

**Ms Brooks:** Yes. I have specifically 18 stores in border towns. I have more border-town stores than any other Dylex division. The extent to which the border shopping is hampering the non-border towns, ie, Hamilton and Toronto, whatever, is very difficult to calculate. I have only calculated the business store for store, which is down 50% store for store in at least 15 out of those 18 stores.

**Mr O'Connor:** Just to continue with what my colleague Mr Carr has asked re locations of your stores, would you say a majority are in malls?

**Ms Brooks:** Yes, they are.

**Mr O'Connor:** Okay, I see. One thing should be pointed out. We are trying to come up with legislation for a common pause day. It is going to definitely have an impact. If we are talking about malls, then perhaps you could try to shed a light on your tourists. Do you think a lot of your business comes from tourists shopping in malls?

**Ms Brooks:** No. I think it is going to be very difficult in terms of a tourism issue with a lot of the malls. That is assuming that tourists want to shop. Then if you want to talk about tourist shopping, I think the Eaton Centre is an absolute example of something that should be designated a tourist area. For goodness sake, it is the largest attractor of tourists in this city, and there are lots of statistics on that, but I do not think the County Fair Mall in Fort Erie could be considered a tourist attraction.

**Mr O'Connor:** Right.

**The Vice-Chair:** Ms Brooks, I would like to thank you very much for that fine presentation. You did a great job.

**Ms Brooks:** Thanks for listening. We appreciate it.

**The Vice-Chair:** That is what we are here for.

**Ms Brooks:** We need your help.

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#### ONTARIO AUTOMOBILE DEALERS ASSOCIATION TORONTO AUTOMOBILE DEALERS ASSOCIATION

**The Vice-Chair:** The next presenter up is the Ontario Auto Dealers Association. You have one half-hour. You can divide that however you want, but I am sure the fine people up here would like to ask you some questions. Before you start, can you please introduce yourself and where you are from.

**Mr Souch:** I am Jim Souch, past chairperson of the government relations committee of the Ontario and Toronto automobile dealers associations and dealer principal of Marigold Lincoln Mercury Sales Ltd in Whitby. With me today is my colleague Shelly Schlueter, who is deputy chairperson of the government relations committee and a partner of Schlueter Chevrolet Oldsmobile Ltd, located in Waterloo.

We welcome this opportunity to share with you our support and express our concerns about Bill 115. Before I address the specifics of Bill 115, I would like to take a few moments to inform you about our association.

Our association represents some 1,100 new car franchised dealers located throughout Ontario. Our industry employs some 60,000 people in a variety of jobs such as clerks, accountants, managers, salespersons, technicians and customer service representatives, just to mention a few.

We are a major contributor to the economic prosperity of this province, not only through the wages and benefits paid to our employees but through the taxes we collect on behalf of the government, such as the new fuel efficiency tax, the tire tax and the retail sales tax.

Our members are true entrepreneurial small business people who believe in the free enterprise system and believe

Ontario provides excellent business opportunities. The dealers take an active role in their local community, sponsoring sporting activities, participating in local service and community organizations and providing leadership as chairpersons and directors of hospital boards and other social agencies.

The Ontario and Toronto automobile dealers commend the government for its commitment to the principle of a common pause day for all Ontario. We are supportive of the government's initiative to amend the Retail Business Holidays Act to improve the effectiveness of providing a common pause day for all of us here in Ontario.

Our members' commitment to the principle of a common pause day and their overwhelming opposition to Sunday shopping led our associations to petition the former government to amend the Motor Vehicle Dealers Act to prohibit the sale of motor vehicles on Sunday. We would still welcome this amendment to our industry. As an aside, I would like to point out that some two years ago we took a survey of the dealers and employees involved in our industry, and 98% of them did not want to be open on Sunday.

I am not going to revisit all the arguments that our association and other presenters have previously made in opposing Sunday shopping and supporting the principle of a common pause day other than to indicate that if dealerships operate on a Sunday, then customers will see an increase in the price of vehicles to offset operating costs. We are currently open an average of 64 hours a week. To open any longer than that is certainly going to increase our costs, and you know who is going to end up paying for these costs.

The increasing complexity of our industry precludes part-time employment opportunities.

A sale cannot be finalized on Sunday since government agencies and financial institutions are closed, preventing credit and lien checks.

Another point I would like to make is that it seems that Sunday is a silent sales day in the automobile industry. If any of you have walked around or been around any of our lots on a nice warm Sunday afternoon, you will see they are filled with people quietly seeing what we have to offer. To open our doors, I think, would drive those shoppers out of there because they do not want to be hassled and bother with salespeople.

It is sufficient to say that the sale of an automobile on a holiday will not be perceived by anyone as a major tourist attraction.

**Ms Schlueter:** Except maybe the dealer.

**Mr Souch:** Our primary objective is to support legislation which will provide for our employees and the people of Ontario a common pause day.

The Honourable Allan Pilkey, Solicitor General of Ontario, stated before this committee, "The principle of a common pause day is not up for debate." It is our contention that the proposed municipal option makes this statement hollow. The proposed municipal option will result eventually in wide-open Sunday shopping in Ontario.

The second report of the select committee on retail store hours, 1987, in the section Tourist Industry/Area Municipal Exemption, records the following:

"This provincial framework might also discuss any possible adverse 'domino effects' of local tourist bylaws upon adjacent or neighbouring municipalities. This effect could arise when one 'open municipality' forces its competing neighbouring municipalities into opening their stores on holidays. Specific concern was raised regarding the practice or desire of some municipalities to declare the entire municipality a tourist area."

The concerns identified by the select committee are now with us. The council in Windsor declared the whole city a tourist area and some politicians in Metropolitan Toronto say they are considering this option.

The municipal option will create an unlevel and unfair playing field in the marketplace of Ontario. For example, dealerships can now open for business on Sunday in Windsor, although I understand none of them is doing this at the present time. However, if one dealer decides to open next Sunday, then because of the competitiveness of our industry, certain consequences will occur. The other dealers in Windsor will be forced to open on Sunday to protect their market shares. As you are aware, we do not have franchise laws in Ontario and I am quite sure the major manufacturers will be on any dealer that is closed on Sunday to get his doors open.

Just a few miles away in the county of Essex, dealers are unable to open on Sunday, because that municipality has not passed a tourist exemption bylaw. The concern of lost market share will force both the individual dealer and the vehicle manufacturer to petition local council to enact a tourist exemption bylaw. Therefore, we see the domino effect occurring and the potential for wide-open Sunday shopping increasing.

Our association respectfully suggests that the determination for a tourist exemption should not be the responsibility of local municipal councils. We are concerned that the criteria for the tourist exemptions are so broad and so loosely defined that they restrict no one. The will of the municipal council simply predominates.

Our concerns were justified when at the many public hearings held recently 90% who addressed the council opposed the application for tourist exemption yet the council granted it anyway. It is our concern that the proposed amendment, which grants a council the final decision in this matter, shackles the provincial government from initiating any action to prevent wide-open Sunday shopping in Ontario.

We concur with the government's intention that Ontario tourist industry must be protected and promoted. We believe the most effective way to achieve this objective is to establish a provincial board to administer the tourist exemption. In our opinion, the provincial board would administer the tourist exemption with a greater deal of uniformity, fairness and consistency to committees throughout the province than is possible by an autonomous local council.

We maintain that for the legislation to be effective, the government should bring the stakeholders together and



redefine and prepare a new set of viable tourist criteria and regulations to work on a Sunday.

Members of the committee, we thank you for this opportunity to share our views with you. If you have any questions, we would be happy to try and answer them at this time.

**The Chair:** Just before we start, we have six minutes each. Go ahead, Mr Daigeler.

**Mr Daigeler:** Can I just clarify? You are speaking on behalf of the Ontario Automobile Dealers Association or just on behalf of yourself?

**Mr Souch:** I am speaking on behalf of the Ontario Automobile Dealers Association and the Toronto Automobile Dealers Association. We represent probably 85% of the new car dealers in Ontario, and probably that represents 95% of new vehicle sales in Ontario.

**Mr Daigeler:** Has there been any debate or discussion recently among your members on that question? I am asking that because we have found that among members of the chambers of commerce and retailers and so on, there has been a change of opinion. I am just wondering whether you have noticed anything in that regard.

**Mr Souch:** No, we have not. We are open, as I said, 64 hours a week now and we feel that if a person cannot find time in 64 hours in a week to buy an automobile, to look for an automobile, I do not know how he has time to drive one.

**Ms Schlueter:** If I may add, our dealers out west, in the western provinces, in Alberta, can open. They have had it for a while. They are now in the process, with their local associations, of lobbying their provincial governments to get it taken away. They found six-day shopping is just spread over seven-day shopping. It has not turned into any kind of increased volume and has caused a great increase in administrative headaches.

**Mr Daigeler:** I have two questions in that regard. First, what happened in the time when our legislation was in limbo, when it was let down? Second, why is it not possible for the western automobile dealers to come to some agreement among themselves? Why do they ask the government to regulate them?

**Ms Schlueter:** Basically we are a very competitive breed.

**Mr Souch:** There is a possibility of getting one dealer out of the group who refuses to come to the party, so to speak.

**Ms Schlueter:** It is all that is needed.

**Mr Souch:** As a result, the dealers have to be open, because if we are not, the manufacturers are going to be breathing down our necks.

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**Ms Schlueter:** Quite honestly, we did have some rogue dealers open on a Sunday back in the time you are speaking of. It worked particularly well for them. It was Christmas. Saturdays you could shoot a cannon off in my showroom and you could walk across the street to the Towers plaza and not find a parking place. That works at a

seasonal time, but over the long term, as it went on, to carry on through January, February and March, all of a sudden, it was not as attractive. There were cannons being shot off in Towers just as well as in our showrooms. It was new, it was exciting, it was another new angle to entertain. We could have our barbecues on Sundays instead of Saturdays.

**Mr Sorbara:** Given what we have heard from this group and others, perhaps I might move that we defer any further consideration of this bill until after the government presents a new piece of legislation in Parliament.

**The Vice-Chair:** Come on.

**Mr Sorbara:** No one likes this bill. I will move something to that effect.

**Ms Shlueter:** Can I second it?

**The Vice-Chair:** Mr Sorbara, we do have people who have come to listen to us today. Are you being serious, sir?

**Mr Sorbara:** Sure, I will move that. I will defer it until after our submission.

**The Vice-Chair:** Is there any debate on the motion? You want to defer it?

**Mr Sorbara:** We will defer it until after this evening, after the last submission. I would encourage the government members to come here for the rest of the submissions. Maybe they would hear something that would change their minds.

**Mr Carr:** Thank you very much for your presentation. The question I am going to ask relates to marketing. I suspect a car purchase is probably the second biggest one people make after a house. While going out to purchase clothes or something would be a big investment, I do not think availability of time applies to this. I think you are right that you are not going to get any more sales out of a particularly big item like that.

I would think, though, that even if some were open and some were closed, you would go to a particular dealership, number one, because it is the right brand, be it Ford, General Motors or whatever, but also there is something special about it: It has a good reputation for good price and, as you note in your industry today, the servicing aspect of it.

Do you really think you would lose sales if one person opened, that people making a big decision like purchasing a car would really say: "Well, we've got nothing to do. Let's go out and spend \$20,000 today"? Or do they really take a lot of time? It is not made on one day like it would be to buy a shirt or something. Am I wrong in thinking that way?

**Mr Souch:** To clarify the point, the difficulty is that in our industry there are a lot of people out there who use very high pressure tactics.

**Mr Carr:** Car salesmen? No.

**Mr Souch:** There is no question about it.

**Mr Carr:** Car salesmen use pressure tactics?

**Mr Souch:** Our committee is very opposed to some of the tactics that are being used.

**Mr Carr:** I agree.

**Mr Souch:** They get some of these people walking in off the street and, boy, they just about take the shirts off their backs before they let them out of the door. We do not like this way of doing business and we are opposed to the types of advertising that are going on right now, but that is another story. It is very difficult to get the dealers to co-operate because of the competitiveness of our industry, but en masse, they do not want to be open on Sundays. To be open on Sundays, we have to have a manager, an appraiser and then we have to have salespeople as well. Also, 64 hours a week now means we would have to hire additional help and the costs would go up.

I think we would all end up spending a fortune on advertising, educating people to come in on Sunday and shop. All we are doing is pulling them out of Saturday or pulling them out of Thursday night or something and bringing them over to Sunday. We are not going to sell any more cars but we are going to spend a lot of money, and you know who pays the additional expenses.

**Mr Carr:** The difference I see with cars is of course that you do not have the money in your pocket or the bank. The vast majority of them are done through some type of loans.

**Mr Souch:** We will take plastic.

**Mr Carr:** You will take plastic. Anything in this day and age. So the big problem is that a lot of people would be having to go to make arrangements for the loan with the bank. That is why I am saying with something a little bit smaller, people will make it at the point of sale, because they will put in on their plastic, but most people when they are going to buy a car say, "Boy, we've got to think about this." When my wife buys things, she thinks about a coat for about two weeks, but people would not come in on a Sunday, make a point-of-sale decision and buy the car, even under those pressure tactics I would think, because obviously they would then have to go to the bank and they have time to think about it. So I guess what I am saying is I do not see the automobile dealers being too concerned about opening on Sunday, because I do not think it is something that people will do on the spur of the moment on a Sunday.

**Ms Schlueter:** I might just add that in another capacity I am a member of the vehicle compensation board. I see the damage that disreputable dealers have done. I have seen the effects of impulsive buys on new Canadians. I have seen dealers pressure people into paying in full, knowing the doors are going to be closing. That is almost a \$4-million fund that the dealers have built in conjunction with the government. And it does happen. There are impulsive buyers out there.

The other side of that is if the impulsive buyers then want to change their minds, to try to unravel something is a horrendous nightmare. For those people to try to get their liquidated damages or deposit back from a dealer, it does not happen. I know and Jim knows you cannot make someone buy a car, but you can sure make them run around in circles before you give them back their deposit. It does happen.

**Mr Carr:** But what I am getting at is—

**The Vice-Chair:** Thank you very much, Mr Carr. That is it.

**Mr Carr:** You are not going to see where I am coming from.

**Ms Schlueter:** There are impulsive buyers still out there.

**Mr Fletcher:** I am a buyer. I am not a shopper, I am a buyer.

**Ms Schlueter:** Great.

**Mr Fletcher:** We have been hearing a lot of presentations—

**Mr Souch:** Can you give me your phone number?

**Ms Schlueter:** I got it first.

**Mr Fletcher:** I guess I should not have said that. I will give it to you after.

Your association suggests that the determination for a tourist exemption should not be the responsibility of the local municipal councils, that the tourist exemption is so broad and loosely defined that it really is non-restrictive and that you also believe in a provincial board. With a provincial board, are we looking at stakeholders who could possibly come up with a viable set of criteria for tourist exemption, stakeholders such as retailers' unions and local governments getting together, getting something down that people are agreeing on, instead of just throwing it out loosey-goosey?

**Mr Souch:** I think the way it is set up now we are going to have wide-open Sunday shopping down the line because, as I say, Windsor is now open. If Essex feels that it has got to be open, it is going to become a tourist-exempt area. I do not know what tourist attraction they have there, but they will find one.

**Mr Fletcher:** There have been a lot of presentations made and I think it is a great idea. I fully support that concept. Let me just go on record as saying that I will try to convince as many people as possible on this committee and also in my own caucus that I think this is the way we should go. I think that is the amendment I will be trying for personally.

**Mr Souch:** I will put it this way: If you involve people in the various industries, they know what is going on.

**Mr Fletcher:** That is right. I agree fully.

**Mr Souch:** We are handling it first hand; not to say that the government does not know what is going on or elected representatives do not know what is going on.

**Mr Fletcher:** I agree with your statement fully. Thank you, sir.

**Ms Schlueter:** We are for the most part a family-owned business. It passes down through the generations. It is starting to dilute somewhat by my daughter's generation, but regardless of that fact, being a family-owned business, you tend to do things with your staff. We have a social club that our staff runs. We run social functions. We have to plan easy things such as even our Christmas party so that everyone can attend, because our hours are so fragmented; so that salespeople can attend and enjoy and they do not have to get up at 9 o'clock Saturday morning to go



into work. The staff party now is on a Saturday, so we have to book that many years in advance. We have two big hotels in Waterloo.

It is things like that—we had a busload of employees and their families take in a Blue Jays game—that our social club does. We call it the 300 club. Those kinds of things may be small potatoes to you people, but we are a small family-owned business with employees we have to really nurture, because if they choose not to work at my dealership, they go off down the street to another dealership. It is like a revolving door and it costs every time a new employee comes in. If you get good ones, hang on to them, put their kids through college. It is that tough out there to get good, dependable people to work for you. We are talking lots of money in responsible positions that they are responsible for. You can be ripped off in various ways.

That is one other aspect to think about, that there would be no joint time at any time that everyone and everybody, every employee of the dealership, could get together.

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**The Vice-Chair:** Mr Kormos, could you keep it brief if you would not mind, please?

**Mr Kormos:** Are you asking me whether I can keep it brief or is this an exhortation?

**The Vice-Chair:** You have it.

**Mr Kormos:** I do not spend as much time at car dealerships as I used to when I had the 1987 Corvette. It was always in the shop. The 1990 one has been wonderful, though.

What you are saying is that, within one community, if a given car dealership opens for whatever capricious reasons it may choose, others are going to be compelled to do it, even though they understand that it is bad business to open seven days a week. We extend that one further and we look at municipal optioning and the fact that, notwithstanding guidelines, municipal councils are what they are. They are subject to pressures and influences, and different councils may well choose to decide things in different ways. What happens if your community of Waterloo indeed understands that there is not going to be Sunday opening, but a car dealership happens to be in a location which is a tourist area by definition in an adjoining community? You are put in the same boat as you are if the car dealership down the road opens, are you not?

**Ms Schlueter:** Absolutely. As I say, we might be missing something. We might be missing a car sale if we do not open, because New Hamburg has the Mennonites there and it is open.

**Mr Kormos:** So municipal optioning ain't going to work.

**Ms Schlueter:** It is a step, but we have to have some kind of control. We just do not want such broad criteria to fit in. At one point they are saying here, "The retail business establishment...provides goods or services necessary to tourist activities in the area served by the establishment." Are we talking about, "I better have my parts and service department open in case somebody blows a gasket"?

The technicians and the parts people are nine-to-fivers. They are nine-to-fivers Monday to Friday.

**Mr Kormos:** As they should be.

**Ms Schlueter:** Absolutely.

**Mr Kormos:** Gotcha.

**The Vice-Chair:** Mr Mills has made a big request here that he have a few brief seconds.

**Mr Mills:** Thank you Mr Chair. I would just like a brief few seconds of Mr Souch. I represent part of Whitby in Durham East. I am very glad to see you here today. Another added factor that perhaps you do not know is that I bought my car from Marigold Lincoln and I must say that I would like it on the record that what you said is actually what you preach, a very well run, reputable company. Thank you for being here.

**Mr Sorbara:** We will be back now after these messages.

**Mr Souch:** I have got that on tape and I am going to use it.

**Mr Sorbara:** Right up in the store in big print, "Endorsed by Gord Mills."

**Mr Mills:** It is GM country.

**The Vice-Chair:** I would like to thank you for taking the time out to come down here today.

#### REXDALE BUSINESS ASSOCIATION

**The Vice-Chair:** The next people up are the Rexdale Business Association. You have a half-hour.

**Mr S. Singh:** My name is Shamsher Singh. I am a representative of Scarborough Textile and Fabric in Rexdale and I am the general spokesman for that association.

**Mr G. Singh:** My name is Gurcharan Singh. I am here to present a brief on behalf of the Rexdale Business Association.

**Mr Bal:** My name is Manohar Singh Bal. I am also here on behalf of the Rexdale Business Association and I am also the secretary of the Ontario Council of Sikhs.

**Mr G. Singh:** We were expecting a fourth gentleman. I think we lost him somewhere in the traffic. We will see if he can join us later on. It must be the weather.

Good afternoon. Before I start reading the brief, I would like to very quickly give you an outline of what is contained therein. The first part talks about what we are going to be speaking with you about. In the appendix we have a list of the members of the Rexdale Business Association, followed by the Sikh holy days and festivals. Finally, in the third appendix, we have a note about the Sikhs as a people.

First of all, with respect to the bill, we are pleased and honoured at this opportunity to come before you and present our views on Bill 115. The Rexdale Business Association is an association of concerned businesses in the Rexdale area, the main businesses being fabric stores, jewellery stores and department stores. The current membership consists of 12 businesses and, as I said, a complete list of these businesses is in appendix 1.

With respect to Bill 115 itself, we feel it is a very significant piece of legislation and it has many wider repercussions

that just the financial health of the province. We see that the commitment of the government is also in earnest, and that is reflected in this august committee here. We are grateful for this opportunity to address you.

Similarly, the bill impacts on the social, cultural and religious lives of the owners, employees and indeed the shopping public itself. Therefore, our presentation will discuss these aspects before any recommendations are made.

Most important of all for the Rexdale Business Association, the impact of the bill must be judged with respect to its religious impact. The majority of the members of the Rexdale Business Association are of the Sikh persuasion, but that is not to say that this is detrimental to any other religious persuasions represented through its membership. We have consulted other people who are members, and we feel that this is consistent with their views on the religious aspects of the bill.

Specifically then, the Sikh religion was founded by Guru Nanak in 1469. He was followed by nine other gurus. The prophethood was invested in the Sikh community and our Sikh bible. Both these are very significant and important in the practice of our religion. These events, which celebrate the births, deaths, marriages and pontifications of the 10 gurus, are our religious festivals.

In the Sikh faith there is no religious day as such because with the consistent philosophy of Sikhism, any day, any time and any place is a holy time, event and location. However, by custom and tradition stretching to well over a century—this is how much our research yields us—the Sikh Sabbath has by default been a Sunday. Therefore, Sunday is a very important and a very religious day in that sense.

We would like to tie that up with the religious aspect. In the practice of Sikhism, going to the Sikh church, which is called the Gurdwara, is very important. This is done on a Sunday; therefore, the two tie up. Religiously, it is very important, fundamental, and indeed we are ordained to go to church, and we go to church on Sundays. Therefore, Sunday is a religious day. Therefore, it is *de facto* Sikh Sabbath, and therefore Sunday must be recognized as a religious day. This is the religious impact of our presentation to you: that Sunday should be declared a religious day and therefore it should be a holiday.

The Sikhs are also commanded to be family members. Celibacy is not permitted in our religion. If for whatever reasons, for instance medical reasons or some social reasons or things like that, a person, a male or a female, follows celibacy, that is to be accepted as a social situation. Religiously, we must be householders. The point I am trying to make is, the family aspect in a Sikh's life is very important. Religiosity in a Sikh is also very important, and the two tie up. Therefore, Sunday is not only a religious day, a holiday; it is a family day.

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Sikhs very emphatically demand that in addition to personal spiritual advancement, social commitment be religiously respected. I would like to read that sentence once again. Sikhs very emphatically demand that in addition to personal spiritual advancement—which is a personal, spiritual thing; it is internal, it is for me. But that is not all;

there is another aspect to a complete life, and that is a social commitment, and that must be religiously respected. All social functions, such as birth celebrations, marriage performances and receptions, functions involved with passing away, baptism, are conducted in the Sikh church, in our Gurdwara. These functions are invariably performed on Sundays. So there is a social impact, which is very important, there is a family impact and there is a religious impact.

Therefore, it is essential that this day be known to be available for such events. Visitors and guests would also coincide their arrivals and visits on the appropriate functions. Most of these functions are family functions, and Sunday would be the day when the family would be together to attend, participate and contribute in a meaningful manner. Therefore, socially speaking, Sunday is a very important day for such activities; indeed, a red-letter day in the social calendar.

On top of all this, we feel that Sunday is a children's day. It is very important in this overworked and overtime era that at least one day be dedicated to the upbringing of children and the maintenance of the family. All children-related activities such as birthday parties, picnics, outings, visiting friends and relatives, etc., are done on Sundays. Sunday is, in essence, a children's day and should stay that way. It must be allowed to be a full and complete event. This is the day when the day care centres, the baby-sitters, the child-minders, are all banished. This is the day to be a parent, to be a guardian and to be a relative. Children are fussed over, prepared for the following hectic week and given private and personal lessons on this day, Sunday, in religious affairs, in sociology and in civics.

Additionally, there is a cultural impact. As a community, cultural functions are always held on Sundays. Sports events, movies, theatres and the like are always arranged for Sundays. This is the time to colour the mosaic of the multicultural fabric of Canada, which we so like to talk about and boast about and really be proud of. This is the meaning of multiculturalism as we know it in Canada, and Sunday holiday is a Canadianism holiday and must be celebrated as such. This is the day that allows us that multicultural thing which we keep talking about. It is very fundamental to the fabric of Canada, and this is the way we will keep it and uphold it.

Then, in all this, there is the business aspect of course. We fully know that open business attracts dollars. The share of the market of any particular sector and the volume of intake for the fabric, jewellery and department stores are well established. However, what is fairly unstable is the allocation of this to the business of a store and a location. We feel, and this is the point we wish to make as far as the business aspect is concerned, that if any one particular store of any of these types in any other location is allowed to be kept open when all the others are by law supposed to be closed, it will create imbalance. It has another problem: it will create unrest in the community. It will bring an imbalance of an order which is not welcome in the health of the community. Sunday is a closing day and a common pause day and we strongly recommend that it be declared and this law be vigorously imposed and implemented.



Section 3.1 states, I will paraphrase it, that the first offence will be \$500 and successive offences would be \$2,000. We submit that this section is too weak. It is not a deterrent in itself. We recommend that the first offence be \$10,000 and successive offences be \$50,000. We are here dispensing social, cultural, religious, moral and ethical justice, and there is no price for any of this.

Woefully we note, perhaps not so woefully, but admittedly we admit that there is an exception in the bill. The bill permits a possible exemption for tourist locations. This definition should be revised. Whereas we in Ontario welcome our guests and extend to them the hospitality of this great province and this country, which it is renowned for, we should be careful not to build obsolescence into our laws and statutes. For instance, to permit the possibility of a hired tongue-plover to stand in a court of law and argue that a fabric or a jewellery or a department store is a tourist attraction worthy of exemption in the Retail Business Establishments Statute Law Amendment Act is nothing short of ridicule and mockery.

These stores do not dispense life-saving items and are not essential commodity sellers so as to cause anguish when a prospective buyer is asked to skip a 36-hour, luxury item, shopfree period. We recommend that the exemption clause be strengthened to take away any lacuna which might be so obvious.

Section 39f talks about compensation. We feel that the law can and should be more specific and strong in the matter of granting compensation to the employees who may suffer for refusing to work on Sundays. The Ontario Human Rights Code and the Canadian Human Rights Act suffer because they are too weak and they do not have the teeth and the strength of law behind them. We suggest that this be made as forceful and as strong as possible. Similarly, we recommend that a minimum fine of \$10,000 for the first offence and \$50,000 for subsequent offences be allowed. The criminality of playing with the lives of others and the law should be judged as such. As a final judgement, the business should be ordered closed under the act if repeat violations occur.

Finally, there are some related consequences we would like to very briefly touch upon, and that is that the law must be fair and fairly implemented. It must be enforced uniformly without any favouritism. We feel that if it fails to be fairly implemented, it could manifest as a law-and-order situation. This would cause disharmony, unrest and misplacement of faith in the government in the minds of the community. The effect on the children, the family and the domestic calm will be unmeasurable. No doubt every hour a business is open a buck may roll in, but the price of the buck would be very heavy in the social, cultural and religious ledger.

To summarize, I would like to itemize some of the highlights.

1. Due to religious reasons, Sunday is the de facto Sikh Sabbath. This is based on tradition, culture and the practice of the Sikh faith. Therefore, from our perspective, Sunday closing is the most favoured common pause day.

2. Due to social reasons also, Sunday is proposed to be the day of rest and is promoted as a family day. All social

practices, such as marriages, birthdays, family outings, picnics and particular activities associated with children are held on Sunday.

3. All cultural events are held on Sundays.

4. All intercommunity and intracommunity activities are planned for Sundays.

5. Assuming the Retail Business Holidays Act and the Employment Standards Act recognize and proclaim Sunday as the common pause day, then it is very strongly recommended that in the interest of fair trading and fair trade practices the law be very meticulously and exactly enforced so that no trader may evade the law and profit thereby.

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We further feel that if even one store or business is allowed to open on the designated day of rest, it will promote friction in the community, it will unfairly impinge upon the share of the market and manifest in strife, unrest and disharmony in the quality of life and social behaviour.

6. Jewellery, fabric and department stores cannot and should not be allowed to become an exemption under the designated Sunday closing day, either by becoming or being allowed to become a tourist or such type of an enterprise. We submit and maintain that these types of businesses are not a tourist nor can they ever become an essential business, even to support other legitimate tourist-promoting businesses.

7. Sunday closing will enhance the fairness in the marketplace, we respectfully submit.

Thank you very much.

**Mr Sorbara:** Thank you, and let me say that the presentation was well argued. I am turning to the final page. Paragraph 5 of page 8 makes what I consider to be an extremely important point. You say that even if one business is allowed to open on the designated day of rest, it will promote friction in the community. The problem with the government's legislation is that many businesses will stay open under the tourism fiction, and that will be a great detriment to those businesses that are not going to be able to stay open.

You argue the point eloquently, based on the Sikh religion, which has such a profound impact and influence on those who adhere to the Sikh faith. But I am wondering why the state, why the government, ought to join hands with you in enforcing that religious commitment. Just to tell you where I am coming from, I point out that the Jewish faith has long held Saturday to be the Sabbath and a holy day for the purposes of its religion and that has been able to predominate in the life of someone who adheres to the Jewish faith without the state reinforcing that by requiring store closings.

Given that in Canada some people adhere to the Christian faith and some to the Jewish faith and some to the Sikh religion and some to Islam, which holds Friday as the holy day, would it not be better simply to allow people and communities to make their own free choices and for the state to stay back from the marketplace and not try to prefer one day or to prefer one group of businesses over another?

**Mr G. Singh:** I would like to come back to your first question first. I am not sure if I may have said it wrongly. The point we were trying to make is if any one business of this type is allowed to be open when others are being closed, then there will be a problem because it will attract. It will work as a magnet. We know that one store on such-and-such a street is open, and everybody will flock there and this will create a problem.

**Mr Sorbara:** I certainly agree with that.

**Mr G. Singh:** This is the one business thing I am talking about.

You have very eloquently brought in the relationship between the Sikh religion and the Jewish faith. True. The argument which will give you the answer to your question is this: Sikhism is not a religion only, it is a way of life. Therefore, when I say that we would like to have Sundays off, as I said earlier, it is from a religious, a social and a cultural point of view. We cannot bring forward those other aspects of being a Sikh if that opportunity does not come about to be a family, if togetherness is not allowed to be on a certain day. Sunday is not only a religious day; it is a cultural day, a social day, a family day, a children's day. Because of that we say there is an onus on the government to intercede and act on behalf of our citizens. To promote religion, if it happens as well, there is no harm in it, but that is not the exclusive reason why we are saying this.

**Mr Carr:** Thank you very much for your presentation. I grew up in the Rexdale area. As a matter of fact, I went to West Humber Collegiate, as did my wife, which is not too far from some of the businesses on Albion Road. It is nice to have the people from Rexdale come in.

My question is along the same lines. As you know, with the tourist exemption, some municipalities are going to open. They are going to take the blanket exemption and away they go. I want to see what the impact will be on your businesses in the Rexdale area if in fact, say, Peel decides to open under the tourism exemption. They are close enough. Do you see people from Rexdale then whipping over there and doing shopping and cutting out your business?

**Mr G. Singh:** I think we cannot tell you with any great certainty yes or no, but once we allow ourselves that possibility, anything can happen. I would say to you, yes, when people would come, they would sort of head towards that area because they know there is one place that is available. They would go there, but that will create a problem in the rest of the businesses as well. So why should we have that exemption? If the law says no Sunday opening of these types of stores, that should be implemented throughout the province. I think if we leave the municipal thing, it will not be practical in that sense. There is that possibility. Yes, we feel that.

**Mr Bal:** I would like to add that right now we do have this problem. Even within the greater Toronto area, the law is not being implemented equally. In the Rexdale area stores are not allowed to open, whereas in the Gerrard Street area stores are allowed to open. It is the same policy, the same police force implementing it, but somehow the

local in charge of that particular duty is not implementing it the same way.

When you compare Metro with Peel, it is the same problem. Sometimes the Peel police enforce the law and force them to shut down and sometimes they do not. Let's say the people in Peel know that Toronto is closed. Even if they are going to get a fine of \$500, they would like to open and make more money anyway. So at this time, this problem is in the community, and that is why we say that the law should be fairly implemented throughout and there should not be any exemptions.

**Mr Fletcher:** Thank you for your presentation. As far as the tourist exemptions are concerned, you are saying they are too broad, they are too loose and you would like to see them tightened up so that someone will not be able to go into court and argue that they can be open. As I said before, we have heard a lot of presentations about having stakeholders, the retailers, the unions and local government get together and determine what the criteria should be and make it tighter. Is that a good proposition that you yourself could get involved in?

**Mr G. Singh:** Yes. We say to you, sir, that if we are going to make the law, let's be serious about it. Why should we have loopholes, unless we are trying to plot against ourselves? Either make it and make it good, or let it go.

**Mr Fletcher:** I agree with you fully, sir. Thank you very much.

**Mr G. Singh:** We are aware of that.

**Mr Kormos:** On a point of order, Mr Chairman: A tongue-plower I trust—

**Mr G. Singh:** I hope no lawyers are here.

**Mr Kormos:** Mr Sorbara stepped out for a moment, but I trust that is a highly descriptive and colloquial name for a lawyer.

**Mr G. Singh:** I shall take pride in that. It was not meant to be—

**Mr Kormos:** I know enough lawyers that I am going to adopt it into my own vocabulary.

**Mr G. Singh:** After the presentation, I will tell you what they are officially known as.

**Mr Kormos:** I am sorry. That was not a point of order, was it?

**The Chair:** No, you are right. Can we hear from our next lawyer, Mr Lessard?

1530

**Mr Lessard:** I suppose that is the nice way of saying it in the Sikh culture. That is the first time that Peter and I have been referred to as tongue-plowers.

I just wanted to say that I have a lot of respect for the Sikh community's appreciation of its culture and the society and the family. I suppose that if we had a bit more of that influence, we would not find ourselves in the dilemma we are faced with in trying to regulate a common pause day.

You talk about the disruption that may take place in the community. My question is along the lines that if there



were some types of stores that were able to open, would there be an intimidation or a compulsion felt by members of the Sikh community to possibly open their stores or work on those businesses, or is the Sikh faith such that it would just be impossible for them to open and they would forgo that business on that day?

**Mr G. Singh:** I think more the former than the latter, in the sense that it would create a problem inasmuch as in the community we will tend to frown upon that person. Unfortunately, I cannot say just because a store is open that person is going to be a good family man and a good cultural man and a good religious man. I wish I could, but the two do not necessarily go together. However, if the stores are to open and that single business is also supposed to stay closed, there will be more respect for the community within itself. We will know that we are upholding the law. We will know that we are doing the right thing and that we have an opportunity to be religious and cultural and social. So it will be an impetus to better living for the individual as well as a good uplift to the community in itself. We internally feel that.

**Mr Lessard:** So in expressing your call for the government to commit itself to the common pause day principle, you are speaking not only on behalf of the Rexdale Business Association but on behalf of the Sikh community at large.

**Mr G. Singh:** Indeed we are.

**The Chair:** Thank you very much, gentlemen.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** We now have a presentation from the Ontario Public Service Employees Union. Your name, sir?

**Mr Onyschuk:** I am Jim Onyschuk. I am a research officer with the Ontario Public Service Employees Union.

**The Chair:** We have approximately half an hour to be divided between your presentation and questions, which I am sure the members here will have plenty of.

**Mr Onyschuk:** I will try and be as brief as possible. Most of you know the Ontario Public Service Employees Union, since the government is the employer of a great portion of our members. We represent approximately 109,000 workers, the largest group working directly for the government of Ontario.

Our members range all over the map in terms of jobs. The only kinds of jobs we may not represent are in the retail industry itself, so the question arises, why would we have an interest in this issue, since it seems to apply mostly to retail workers? Our members also are members of families, and we strongly support and endorse the idea of a common pause day, particularly its being Sunday. Since many of our members are married to people who do work in retail establishments, we like to see a common day for the family, so we do have an interest in this bill.

We support the bill. We support the stand that has been taken by the United Food and Commercial Workers on the changes required to the bill. The bill does support the tourist industry, while at the same time, and most important for workers in the province, it extends to thousands of retail

workers the absolute right to refuse Sunday work without fear of losing their jobs or facing disciplinary action.

Under the employment standards part of it, section 39eb(1), retail workers, including part-time, will have the absolute right to refuse work on Sundays or on a holiday in any retail business defined under the Retail Business Holidays Act. Of course, there are always the manipulations on the part of the employers, through their scheduling, to force people to work on Sundays, and we have to design some sort of regulations to further protect workers, so the legislation has to be tightened up.

There are some additional benefits, such as if a worker agrees to work on Sunday but subsequently chooses not to, for whatever reason, he or she would, with 48 hours' notice to the employer, be allowed to opt out in that kind of circumstance. Some of the other benefits under the Employment Standards Act include the 36 continuous hours of rest, which has to be supported, and where there is a dispute, the employment standards officers will be empowered to issue orders for compensation and/or reinstatement. There will have to be some strong guidelines issued for the employment standards officers who are our members to assist in this kind of situation.

The five major concerns that our brothers in the retail industry have raised are:

1. The intent of the Retail Business Holidays Act. They point out the fact that there are what we in the union business refer to as "weasel words" or "weasel phrases," and these should be taken out and replaced with some stronger wording. For example, the wordings "shall take into account" or "should be maintained" are so broad that they do not effectively prohibit anyone from coming under this act.

2. The municipal option. There are so many ways in which municipalities can allow businesses to opt out of the provisions of the act that this has to be tightened up, and we ask that this committee take a close look at the wording proposed by the UFCW.

3. Drugstore openings on Sundays. They propose that there be a limit in terms of size. We go into drugstores nowadays and they do not look like drugstores. You can buy beach balls. There is all sorts of confectionery. You can even buy hardware in drugstores, which I found kind of surprising. So are they drugstores or are they basically broader retail stores? The proposal of up to 2,400 square feet plus limiting the number of people who would work in the drugstore is an important proposal.

4. Enforcement of the legislation. Again the amount is too little. It should be for a first offence a \$10,000 fine and a subsequent offence a minimum \$20,000 fine, although after hearing the previous participants, proposing a \$50,000 fine, that is probably fine with a lot of people in that kind of instance.

5. The definition of a retail business. We find that it is too broad a definition and it is too general in the sense that it does not capture certain types of retail establishments such as the club warehouse, and that should be included. You have to tighten up the definition of what is a bona fide retail business.

We support the proposed amendments that you find on pages 2 to 6 of the UFCW brief.

We have heard a lot of economists speaking on the economy, and of course you all know that when you get 12 economists in a room you get 13 different positions, so I am going to present what I think is a solid position.

Does Sunday shopping boost the economy? I would maintain no. In fact, if you rephrase the question, "How does spending a fixed amount of money over six days differ from spending the same amount over seven days?" then the answer becomes quite clear. The costs go up, the overhead goes up and you have to pay for that overhead through either increased prices and/or laying off workers as a way of recouping the increased costs. So it would not boost the economy in both cases, because there would be a cost-push inflationary impact on the one hand, and on the other hand, where there would be layoffs, it would be causing unemployment and further costs to the public sector in terms of having to bear unemployment and so on.

There are no economic data supporting the case that Sunday shopping boosts the general economy. The only thing you can argue is that in certain instances, on a case-by-case basis, some retailers may benefit at the expense of other retailers, and that is what the issue is in terms of a lot of the retailers getting the jump ahead of somebody else. But for the economy as a whole, there is no benefit. In fact, all it does is create a situation where there is turmoil in the economy and a number of people could be hard hit.

1540

Are jobs lost without Sunday shopping? Again there are no data to support the proposal that jobs are lost. The A&P chain lost 202 jobs in the six months following June 1990 when there was widespread Sunday shopping and, similarly, Loblaws reduced staff hours by 3.14%. It stands to reason; the overhead had increased and they had to find a way of recouping the overhead costs, so they rationalized the production and consequently people were laid off. Of course, it ends up becoming an expense for society as a whole.

Will tourists stay away? I do not see tourists flooding into Canada for purchasing groceries or anything like that. I see them coming into Canada to watch ball games. I see them for many other reasons: The streets are safe, we have a decent society. They are attracted to many attractions. There is the CNE going on right now. There are various terrific parks and other tourist spots that we offer. That is what attracts tourists, as well as the dollar.

The monetary exchange rate, as I am sure you have heard before, is way too high and this is one of the major reasons why tourists are attracted to countries, they are getting a benefit through a lower exchange rate. In the case of Canada, the reason there may be a decline in some of the tourism is due to the federal government policies of high exchange rates. It has nothing to do with the province of Ontario in terms of controlling; it is a federal matter. Also, the free trade agreement, the GST and these other factors, I am sure you have heard a number of times, are key factors in why Canadians are flooding across the border and tourists may be staying away.

The issue of cross-border shopping is being brought into this debate and we feel that this is a false kind of connection, that cross-border shopping has absolutely nothing to do with the issue of wide-open Sunday shopping. The issue, as I pointed out, is an economic issue that is brought on by the federal government.

In other provinces that do have wide-open Sunday shopping, such as British Columbia and Alberta, with the changes in exchange rate policies and the GST and so on, there has been an increase in cross-border shopping, so that argument does not hold water.

There are a number of social costs associated with Sunday shopping, namely, that we will have to hire on more police to deal with any particular crimes such as shoplifting and other related crimes, public transportation will have to be increased to handle any extra flow, day care facilities and so on. There are a number of social costs that we have to bear for this and those social costs will be primarily borne by the municipalities that have to increase property taxes in order to pay for these costs.

A key point that we would like to make pertains to family life and leisure: The issue of a common pause day must not be confused with the issue of cross-border shopping; however, it must be linked to the issue of how work relates to family life and leisure. It is an important linkage. The reason people work is so that they can have time for leisure, and it would be great if people could have leisure at the same time.

For most young families, both parents, including mothers of young children, are expected to work for pay, and both parents are equally responsible for the economic support of their children. Most important, both parents are responsible for providing emotionally secure support systems for their children. A key element of a support system is when a family shares a common day of leisure. Since governments now encourage both parents to work, it is both proper and necessary that governments make it as easy as possible for them to do so, and governments must likewise focus policy on making it as easy as possible for workers and their families to enjoy leisure time together. In any civilized society government must promote and foster more voluntary leisure time.

We also see this as an issue of free choice and flexibility, which helps improve our quality of life. Governments and service industry employers should make it a policy goal to provide the individual with the greatest possible degree of freedom to allocate his or her own time among different uses, be it work or be it leisure. By having freely determined options rather than being forced by employer pressures, workers will have the power to choose how time is allocated. This empowering process goes a long way towards reducing work stress and improving the quality of life. Bill 115 will assist workers to gain some power over their work and leisure time, and for that reason we commend it.

In conclusion, the labour movement has long argued for a common pause day for workers and their families. We reiterate that we agree with our brothers and sisters in the United Food and Commercial Workers union when they conclude that, while representing a move in the right



direction, the bill would fail to ensure that this goal is met and would serve to open a door to further erosion of the common pause day unless there is some tightening up of some of the words. We respectfully ask that this committee recommend the proposed amendments of the UFCW.

**The Chair:** Thank you, Brother Onyschuk. We have approximately four minutes per caucus.

**Mr Sorbara:** Mr Onyschuk, I noticed at the beginning you mentioned, "Our members work virtually every variety of work week and would, if polled, indicate a preference for Sunday being a common pause day from work." Is that an indication that in upcoming contract negotiations with the government of Ontario you will be looking for statutory protection against having to work on Sunday?

**Mr Onyschuk:** It is not an indication of that. Many of our jobs are 24-hour kinds of jobs. We are working in institutions, correctional facilities, hospitals and so on, so in that kind of situation you could not apply that. However, I have been involved in many cases of negotiating shift schedules, and the preference of our members has always been for at least having a Sunday off on a regular basis. It is a great demand on the part of our workers.

In other countries they have situations where unless it is absolutely necessary and an essential-service situation, there would be, for example, no midnight shifts, and weekends are the ultimate goal.

**Mr Sorbara:** Those are matters that have been arranged through collective bargaining, but my question has to do with legislation. Here we have retail workers being granted in statute an absolute right to refuse. I guess what I am asking is whether you expect that sort of legislated protection to be granted to other workers in the workforce.

My other question is this. You will recall that during the election campaign last year the government had promised a common pause day. I recall just shortly after the election a publication of the Ontario Public Service Employees Union, a sort of congratulatory note as to how OPSEU had helped defeat the government, and now we had to get on with whatever. Do you believe this legislation, given the tourist exemptions and the opportunity for communities broadly to open on Sunday, is a fulfilment of the election commitment of the New Democratic Party for a common pause day?

**Mr Onyschuk:** Can you rephrase that question?

**Mr Sorbara:** Bob Rae and the NDP promised a common pause day if they were elected. They were elected. You guys said you helped them get elected. What I want to know is, do you consider that this legislation we are considering in this committee—

**Mr Onyschuk:** Meets the requirements?

**Mr Sorbara:** —reflects the fulfilment of the commitment to bring about a common pause day? As far as I am concerned, it deals with a very small number of workers in the workplace. Maybe 50% of retail workers will be able to take advantage of it. Public sector workers will not be able to take advantage of it, industrial workers will not be able to take advantage of it, service workers will not be able to take advantage of it. It affects—a best guess—

maybe 300,000 workers, optimistically. In your view, does that represent the commitment to bring about a common pause day in Ontario?

**Mr Onyschuk:** No.

**Mr Sorbara:** Then we agree.

**Mr Onyschuk:** I think where some confusion will arise is that not all government workers are essential.

**Mr Sorbara:** Any workers. For most workers, this does not mean anything. They do not get the day off. A few retail workers work. I cannot even get a definition of a common pause day.

**Mr Onyschuk:** There are 300,000 retail workers in Ontario.

**Mr Sorbara:** No, there are more than that.

1550

**Mr Onyschuk:** Approximately 300,000 from what I understand. There may be more. Then, of course, in many other areas there are workers who have the weekends off. What we are maintaining is that unless it is essential, unless it is an around-the-clock, seven-day operation, where there is an option—and the title of our brief is very clear; it says Free Choice—where there is a non-essential kind of operation, the preference should be towards allowing the common pause day. It should be to try to guarantee that everybody be given that common pause day and that there be no—

**Mr Sorbara:** I agree with you, but that is not in this legislation. This legislation deals with maybe 150,000 to 250,000 retail workers. What about the other seven million workers in Ontario who might want a common pause day?

**Mr Onyschuk:** We would like to see legislation that would guarantee that workers and non-essential kinds of 24-hour operations would be given at least the Sunday off. I get these requests all the time to develop these schedules that would meet these particular needs. Our members want it. Everybody wants it. In fact, if you ask workers what day they would like off, you would probably find most of them would opt for Sunday. It is almost an unwritten law.

**Mr Sorbara:** It is almost universal.

**Mr Onyschuk:** It is almost universal, right.

**Mr Sorbara:** That is why I am trying to get, whether you believe that this legislation, drafted as it is with the option of municipalities holus-bolus to open, and not dealing with any workers except retail workers, and then only some of them—do you believe it will bring about the common pause day that Bob Rae promised prior to the election?

**Mr Onyschuk:** For a certain segment, yes, and with some concerns as well, which were expressed by ourselves and by the food and commercial workers, namely, that the language is not strong enough, there are no guarantees. The employer can use various kinds of pressures by re-scheduling people, can force people to work on a Sunday. We have to provide guidelines which will protect workers and guarantee that they could refuse.

**Mr McLean:** I would anticipate that you would have been happy if we had had legislation brought in by the province without the municipal option. The government

would bring it in and say, "Sunday is going to be a common pause day, and we're doing it. There's no option for the municipality to say you can be open or closed." It would be a direct hit from the province saying this is who can be open, whether it is 2,400 square feet and four employees or eight employees, or whatever. Would you not have anticipated that would have been the type of legislation that we would have gotten so that it would have been definite?

**Mr Onyschuk:** I think giving the municipalities the option is a way of getting around the principles of the legislation, and that is one of the dangers. Yes, I would agree that it would be better to put it in some stronger way so there is no giving a group the option of finding a way out, because all the municipality has to do is declare, "Our town is a tourist area."

**Mr McLean:** But that is really the dilemma we have today, I would think: Are we going to allow the option to remain or are we going to say, "Okay, we are going to have a common pause day and there are going to be regulations and they are going to be set by the government"?

**Mr Onyschuk:** I would opt for the latter, that it be set by the government and there would be regulations, there would be very clear-cut definitions as to what would constitute a tourist area.

**Mr McLean:** Is that the stand most of your brothers and sisters are taking with regard to this legislation?

**Mr Onyschuk:** Yes, that is the stand of our union.

**Mr McLean:** Good. Thank you.

**Mr Fletcher:** Thank you for your presentation. A couple of things. Do you think Bill 115 is a step in the right direction?

**Mr Onyschuk:** It is. We indicate in our brief it is a step, with some caveats.

**Mr Fletcher:** Right, with some minor adjustments, a little fine-tuning here and there. I agree with you.

**Mr Sorbara:** It all depends on where you are going, what direction you are going.

**Mr Fletcher:** We are going a lot better than what the previous government did. You know that.

As far as the job loss and everything else, the A&P chain losing 202 jobs in six months after the previous legislation was there, where are you getting your stats from?

**Mr Onyschuk:** I am relying on other unions, some of the data they have come up with.

**Mr Fletcher:** That is okay. I know how well unions work together. I was in one for a long time and I am still a good member.

As far as what you are saying about the social cost of Sunday shopping, we have heard business leaders come in and everyone else, and they have been asked the questions: "Has it hurt the family unit? Has it broken up the community?" They have said: "No, of course not. Everyone loves to shop on Sunday." Just in your own way, what do you see happening to the family life with Sunday shopping?

**Mr Onyschuk:** I see somebody who has to work on a Sunday, one family member who has to work on a Sunday and another family member who has Sunday off. It creates problems. It throws schedules totally out of whack. It is a nice day for everybody to get together and go to the tourist spots and go to the recreational areas, and it will help boost those areas that are currently already existing. So I see, if you have a common pause day, it will benefit those areas and it helps keep the family together as well. If anybody has ever worked shifts, the most horrible thing is when you are sort of moving into a bed that is still warm, somebody else is going to work and you are climbing into that bed, just keeping the bed warm but never meeting. That is what we are trying to avoid by fighting any proposal for a wide-open Sunday.

**Mr Fletcher:** I know exactly what it is like. It is amazing we have three children. I do not have any more questions. I know Mr Lessard does.

**Mr Lessard:** I will keep it really brief. I appreciate the fact that you entitled your presentation Free Choice, and you have made reference to freedom of choice on the last page, because we have been hearing from other people who say this is a free choice issue and the free choice should be if businesses own their business, they should have the choice to open and if workers want the free choice, they can decide whether they want to work or not, and if they do not want to work on Sunday, that is fine. They can have that choice as well.

In your union, is there a premium paid for work on Sundays?

**Mr Onyschuk:** It depends upon the shift, but usually there is.

**Mr Lessard:** Notwithstanding that fact, people who have the seniority to be able to have flexibility in their schedule would most of the time choose to have the Sunday off rather than work it and get premium pay.

**Mr Onyschuk:** Yes, in most cases, but quite often you negotiate a schedule that everybody has the same kind of schedule, except that one person may have a weekend off, let's say the first of the month, and another person with much higher seniority may have it off in the last. By way of analogy, it is like a cannon, like three blind mice, you know. Everybody does the same basic shift except at a different time. Normally, that is sort of a standard kind of shift we do have. We are not like in the blue collar, industrial sector where seniority may guarantee somebody working the day shift versus somebody with lesser seniority working an afternoon shift and so on.

**Mr Lessard:** That is what we heard from Stelco. They said, "Well, if you have been there for 25 years, then you can get your Sundays off."

**The Vice-Chair:** Thank you very much for your fine presentation. I hope everybody takes into account what you said.

1600

SUZY SHIER

**The Vice-Chair:** Next up please, Suzy Shier. Welcome. You have 30 minutes. You can divide that time up however you want, but I am sure the fine people up here



would like to ask you a few questions. Can you please start by telling us who you are and where you are from. Go ahead any time you are ready.

**Mr Posluns:** My name is David Posluns. I am senior vice-president of Dylex Ltd and I am speaking here today on behalf of one of our retail divisions, Suzy Shier. I appreciate the opportunity to participate in this dialogue and consultation and hope that you understand my commitment to retailing and to this province is both professional and personal.

Before I begin the formal remarks of my presentation, I would like to tell you a little bit about myself. I was raised and educated in Toronto. After receiving a graduate degree in the United States, I spent seven years working in the US, including four years working in the retail industry. As well, my family has been in the retail business for over 25 years.

Recently I decided to come home to Ontario to work at Dylex. One of the main reasons I returned was that I realized that the Canadian retail industry is imperilled. I wanted to do what I could to help preserve our distinct retail industry. That is why I am here before you today.

Let me make it clear from the start, Dylex supports the right of retailers to open on Sundays. The reasons that we do not support the legislation are as follows: Bill 115 prevents those in the retail sector who want to work on Sunday from doing so; Bill 115 weakens our ability to respond to the challenges posed by the GST, cross-border shopping and the growing presence of American retailers; Bill 115 decreases the likelihood of renewed investment in the retail industry.

There have been three significant changes in our economy and society since the issue was first raised over 15 years ago. In fact, over the last few years, the issues have become even clearer.

The first major change occurred in our tax system. High provincial and federal sales taxes have made goods and services purchased in Ontario much more costly. This, along with high income taxes, has caused Ontarians to have less disposable income, and this has had a direct impact on the retail industry.

The second major change is the increasing incidence of cross-border shopping. As I am sure you are aware, 70% of Ontario consumers live within a 90-minute drive to the US border, and a walk through the parking lot of any US border mall on Sunday afternoon will confirm that Ontarians want to shop on Sundays. We at Dylex are losing about \$200 million a year in sales annually because of cross-border shopping and \$110 million from Ontario alone, and this continues to increase.

The third major change is the increasing presence of US operations in the Ontario market. I would like to expand on this phenomenon. US chains operating here in Ontario have the financial backing to weather this recession, gain market share and squeeze Canadian retailers out of the market. While some American retailers have established offices here in Ontario, given present trends, it is only a matter of time before the Canadian market gets served by the US distribution networks. That way American retailers can avoid the labour costs, save the taxes and

run their trucks an extra 100 miles north to deliver their foreign-made products into the Ontario market. In short, if people do not soon recognize the serious threat to our Canadian retail sector, we will become a nation of clerks serving American corporations.

I have some firsthand information as to why Canadian retailers are disadvantaged vis-à-vis their American counterparts. One of Dylex's subsidiaries was a participant in a study conducted by the University of Western Ontario's school of business administration. The results of this study showed some very disturbing results.

The study compared the performance of US retailers entering Canada to that of Canadian companies entering the United States. The results were chilling. Of the 29 Canadian businesses entering the United States, only nine were qualified successes. Conversely, of the 13 United States businesses entering Canada, each and every one was successful. The study concluded that US retailers had a lower cost structure than Canadian retailers and that affords them the opportunity to have lower prices. Furthermore, the US companies were more profitable and better capitalized than Canadian retailers and could therefore take more risks. The message of this study was that American retailers are thriving in Canadian markets while Canadians are floundering in the United States.

In short, our tax system has changed, our economy has changed, our society is changing and foreign retailers are presenting new and daunting threats to the survival of the Ontario retail industry. These new factors should be taken into account in your consideration of Bill 115. As committee members, you have a duty to consult and to listen to the public on this and other important issues. Once you have decided on this bill, you can turn your attention to any number of other public issues, but we at Dylex, at our 15 retail divisions, at every store, in every mall across Ontario, all 10,000 of us, will have to live with the consequences of your decision.

Now I would like to talk about the consultative process in Ontario. I was very disturbed when I heard members of this government tell Eric Paul, the chairman of Bi-Way, that the principle of a common pause day is not negotiable, that the rights of retail workers to refuse work are not negotiable and that the tourist exemption is not negotiable. In fact, what we are being told is that Bill 115 is not negotiable. I hope that this is not this government's form of consultation.

First, Dylex, the largest specialty store retailer in this province, was never consulted by this government about this legislation. Now, after the second reading of this legislation when we have finally been given a forum to express our views, we hear that it is too late to discuss the parts of this legislation which concern us. Is that this government's form of consultation?

Second, the only section of Bill 115 upon which this government has indicated that it wants any public consultation is the content of the regulations, which would fall under the purview of this bill. I am not a lawyer but, on review of this bill, it appears to me that this government would be granted extraordinarily widespread and unchecked powers to make regulations under Bill 115.

Why, I ask you, has this government asked for public consultation on this bill if it appears that it is already a fait accompli? If this committee is not here to discuss the provisions of the bill but simply to speak about how it will exercise its vast regulatory power, why do you not simply call this committee what it truly is, a committee to deal with the implementation of the regulations once this majority government passes it through the Legislature? Is that this government's form of consultation?

Third, I was disheartened to hear the new Solicitor General, Allan Pilkey, address this committee midway through the consultation process and say, and I am paraphrasing, "Despite the overwhelming opposition to this bill, we are going to proceed with it." Is that this government's form of consultation?

You can see why people across Ontario are cynical about governments in general. It is especially frustrating because on a weekly basis we receive calls from the economic development officers from towns and states south of the border asking Dylex to consider relocating its offices. These other governments are extraordinarily hospitable to business and truly want to forge a partnership. They have presented many attractive reasons for relocating and they are aggressively pursuing Dylex and other firms in the industry.

We want to stay in Canada. We were raised here. We were educated here. We have families here. We have developed skills that can be applied to our Canadian economy. As you are well aware, some firms have already begun to leave the province. More and more businesses have reached a point where they are forced to say, "One more push and I'll be forced to go." Is Sunday shopping that push? It is hard to say but, considering all the challenges facing us, it is certainly a major disadvantage for Canadian retailers.

The Premier recently said that as a community we have a choice between bickering among ourselves for the next four years and losing to all the external pressures facing Ontario or working together to confront the economic and social challenges to ensure Ontario remains a strong and healthy jurisdiction. We are committed to working with the government in a successful partnership but we need to see some signs that the government is listening to us. We have to be strong to survive and we believe we can work together to help the industry.

I have heard that the United Food and Commercial Workers union proposed to this committee that a new set of regulations be established by a government-appointed committee of the affected stakeholders. This union also suggested that the stakeholders should include representatives of affected groups such as retailers, unions and the government. If the bill passes in its present form, we support this recommendation and propose that it would be most appropriate for a representative from Dylex, as a leader in retail, to be appointed as a member of that committee.

We have made a commitment to fight to preserve a distinctive Canadian retail sector, a sector that responds to the needs of our consumers and protects the rights of our employees. We would like to think the provincial government is with us, not against us, in this effort. Help us to

convince others that Ontario can be a good place to be in retailing. With that, I will turn the microphone over to Joel Teitelbaum.

1610

**Mr Teitelbaum:** Good afternoon, gentlemen. I am Joel Teitelbaum, strategic planning manager for Dylex. Like David I was raised and educated here in Canada and we are both back from recently having worked in the United States. We are now home working to preserve and promote the retail sector here in Canada. Let me tell you that we are waging the fight of our lives to ensure that we continue to make and sell quality products, to retain our 10,000 employees here in Ontario and to demonstrate to our shareholders that Ontario is a good place to do business.

Dylex is a leader in Canadian retailing. Our 15 chains have a total of 1,500 stores across Canada. However, in the US a 1,500-store company would not really be a major player. In fact, it would have to be at least three times that large in order to be considered substantial. I had an opportunity to witness at first hand how American retailers operate and how they view their Canadian operations. Because of the tremendous number of large US chains, they are in a far better position to derive benefits from pooling their resources. For example, they are able to acquire sophisticated information systems which Canadian retailers could not possibly afford. They are better able to monitor market trends and seize market share. They also maintain their head offices in the United States, where they are not required to pay the comparatively higher Canadian taxes.

In retailing, the number of bankruptcies in Ontario has grown exponentially over the past several years. According to the bankruptcy branch of the Ministry of Consumer and Corporate Affairs, there were a total of 383 retail bankruptcies in Ontario in the 12 months of 1990. While that may sound like quite a few, in 1991 so far there have been a total of 513 retail bankruptcies in this province alone.

On a prorated basis that is a 50% increase, and I should add here that October is typically the peak month for retail bankruptcies, so 50% is probably very conservative. You will probably see more like a 75% to 100% increase in retail bankruptcies in Ontario. It is the strong that survive. Unfortunately our US counterparts are stronger because they are better capitalized and better able to survive these recessionary times.

Let me give you an example of how American retailers have a competitive advantage over Canadian retailers. The US-based Price Club operates in Ontario and is permitted to remain open on Sundays, and this is under the pretext of being a wholesale operation. The Price Club can spread its overhead costs over an additional day when competition is sparse. The Price Club can generally offer lower prices than Canadian retailers. They do this by offering lower levels of service and greater automation, which keeps their labour costs down and translates into far fewer jobs for Ontarians. Once again, the Ontario-based firms pay higher Canadian taxes than do their American counterparts. A self-serve operation like the Price Club is allowed to remain open on Sundays while Canadian stores, which have



a higher overhead and offer more jobs to Ontario workers, are forced to remain closed. To me this is no level playing field. You know most of Canada's population resides within a short distance from the US border. We know that because our customers are driving south to Buffalo, Detroit, Erie and elsewhere.

I want to show you samples of the sort of intense pressure American shopping malls are putting on Canadians to shop in the United States. We have a few publications. We have Shop US, Cross Border Shopping Guide and Directory, and Metro Community News, and these are all delivered into the mailboxes of Ontarians living near the border. I will show you here, though, in the Consumer Guide to Free Trade there is actually an update on the Sunday shopping laws. It tells what the old and new laws are so it lets Canadian shoppers keep a diary as to when the Sundays are available for them to travel to the United States.

It will not be long before American retailers simply add Ontario to their transcontinental US distribution network. They will derive all of the benefits of being located in the United States with none of the obligations to support our health care and social service structure. Sure, they may have a Toronto office for a while, but it will simply be a regional office. Eventually there would be no administrative centre in Ontario at all. The retailer would treat his Ontario business no differently than Texas, Oklahoma or Missouri. All retail headquarters and therefore capital expenditures will be outside of Ontario. This does not have to happen. It is not unstoppable. But in the current public policy environment there are fewer and fewer reasons for retail headquarters to remain in Canada.

I know there has been a committee looking at cross-border shopping, but I am simply asking you to adopt a holistic approach when you consider the future of this bill. This issue must be examined in the context of the variety of economic pressures facing our industry and all industries here in Ontario.

We support Bill 115's provisions which enhance the rights of employees to refuse Sunday work. In practical terms, there has never been a shortage of employees who want to work on Sundays. We also support the right of retailers to be treated fairly like other sectors of our economy and therefore we strongly support Sunday openings. In his statement to this committee, the new Solicitor General suggested that retailers were arguing that Sunday shopping would be a cure-all for the effects of the recession. Nobody is claiming that, but there are a series of government initiatives which undermine our ability to remain in operation.

The Solicitor General also questioned the validity of numbers being used by retailers and other groups to measure the impact of Sunday restrictions. Yes, the recession is having an impact on sales, but the Sunday shopping issue is exacerbating an already bad situation. As for whose numbers are most correct, I suggest that as retailers we have a pretty good understanding of the dollar impacts of these issues on our own stores as we poll the spending patterns of well over 100,000 Canadians every day, 300 days a year at our cash registers.

Solicitor General Pilkey has stressed that Bill 115 deals with Sunday working, not shopping. He assumes that society is divided into two groups, workers and shoppers. He assumes that this bill can protect workers by limiting the rights of shoppers. But I view our society as a richer, more complicated fabric, and someone who does not choose to work on Sunday may still choose to shop on that day. I do not accept that shoppers and workers are mutually exclusive.

The workers of this province want freedom of choice as to when they consume and the consumers of this province want freedom of choice as to when they work. Permitting stores to open on Sundays would be consistent with the fact that many other sectors do business on Sundays in Ontario, including the manufacturing and resource sectors which operate seven days a week in order to be much more efficient, productive and competitive. It is not fair that those of us in the retail industry are constrained from operating on Sundays on the same terms.

The federal government's most recent review of the retail industry demonstrated that less than 13% of Canadians work in retail. I should add that the federal figure included stores that open on Sundays as well as management personnel who work in the stores. Evidently, using the federal figures, this does not seem like a common pause day at all. It is a day where approximately 10% of Ontario employees are not permitted to earn a livelihood. We want to make retailing work in Ontario. It is an excellent jurisdiction with great potential, but its potential is inhibited by the various legislative actions taken by this and other governments. We are not looking for bailouts or buyouts. We would like to see the government be our partner in preserving a distinctly Canadian retail sector and to demonstrate its commitment to that sector.

A compromise that we support is the one put forward this morning by Mickey Maklin of Thriftys. We believe that by allowing retailers to open on Sundays between Thanksgiving Day and Christmas Day, this government can show that it is listening to the retail industry and the workers it represents. This brief 10-week exemption would be very welcome, particularly since we estimate that 35% to 45% of Dylex's sales revenue occurs within that period, depending on which market we happen to be serving. With all the factors that have negatively impacted the retail industry, this would be a good first step which could allow retailers to keep Canadian disposable income from migrating over the border to fuel the US economy. I strongly urge you to give this proposed amendment serious consideration and I would also like to just re-read the amendment for the record.

The Dylex proposal for holiday season Sunday shopping:

"It is proposed that Bill 115 be amended to permit the opening of retail business establishments on Sundays which fall between Thanksgiving Day and Christmas Day. Dylex supports Bill 115 in so far as it amends the Employment Standards Act with respect to employment in retail business establishments (part II of Bill 115).

"The above proposal preserves the principle that retail business holidays are common pause days subject merely to a ten-week exception. The policy reasons underlying this proposal are as follow:

"The consumptive behaviour of Ontarians is typically at its peak between Thanksgiving Day and Christmas. An extra day of shopping per week at the busiest time of the year would provide a service to consumers without undermining the principle of a common pause day for the remainder of the year.

"Ontario's retail sector has suffered considerably over the past several years. If this proposal were to be enacted, more jobs would be created to staff retail establishments.

"An increasing number of Ontarians are shopping outside of the province, particularly in the United States. If this proposal were to be enacted, Ontarians wishing to purchase merchandise on a Sunday during the holiday season would have the option to shop in this province."

I thank you and look forward to your questions.

**The Chair:** Thank you, Mr Teitelbaum. Before we start with questions from the caucuses, Mr Mills, the parliamentary assistant, wishes to make a clarification on some point.

**Mr Mills:** In regard to your comments about Price Clubs, it is the view of the Ministry of the Attorney General that Price Clubs fall within this legislation. In other words they are not private; they are public.

**The Chair:** We have approximately two minutes per caucus. Mr Sorbara.

**Mr Sorbara:** Just on that point, the parliamentary assistant makes that point every time the problem of Price Clubs is brought up. Unfortunately, the views of the Attorney General and the Solicitor General do not amount to a hill of beans on that subject; it is the view of the courts whether or not the Price Clubs come and the courts will determine that. I have not yet been satisfied that the court has decided the same rules ought to apply to the Price Clubs as apply to a Dylex store.

1620

Just on the face of it, I am very attracted to your notion that we attempt to get rid of the fiction of a common pause day during that period from Thanksgiving to Christmas. The group of people that is going to decide whether that is possible is not in the room. Frankly, most of them are not in the building. They are in ministers' offices around the Queen's Park precinct and the one who sits as the chairman of that table is in the corner office over there. Have you any hope at all that you are going to be able to convince him and them that it is in the best interests of the province generally, and its businesses, its workers and its retail sector, to allow this flexibility during that peak season? In other words, how has your lobbying gone on this? Ours is just getting nowhere.

**Mr Posluns:** Based on my comments earlier and on the evidence that we have seen, we do not believe that business is being listened to sufficiently strongly to have the confidence that we will be able to get this amendment.

**Mr Sorbara:** If you get the amendment, are you going to have to coerce workers into coming in on those Sundays in order to keep your stores open? Are you going to have to threaten them?

**Mr Posluns:** Our experience has been that we have had no problem whatsoever in getting people to volunteer to come in on Sundays. We have never ever had to force anyone to work on a Sunday.

**Mr Sorbara:** Just as an interesting comment on that, we have had public hearings on this bill for quite some time and we have invited any member of the public to come before us. We have not had one worker who said, "I was coerced into working on Sunday against my will." The whole theory of this law is to protect workers who are helpless, notwithstanding the might and power of the United Food and Commercial Workers and other things, including the statute that already exists.

**Mr Posluns:** During the time frame outlined in our proposal, I would venture to guess that many people would be looking forward to trying to get extra income to support their holiday purchases, and this is a perfect vehicle for them to earn that revenue.

**Mr Mills:** On a point of order, Mr Chair: I do not think it is correct for Mr Sorbara to suggest that we are not listening, because the very essence of this committee is to listen and to take note. You suggested that we are not listening, and that is not right.

**Mr Sorbara:** No, no, no. I believe that you are listening. What I am saying is not getting through. I just hope what they are saying is getting through. I know you are listening to them.

**Mr Carr:** Thank you very much for your presentation. I think one of the people on the committee said this morning that it was nice to have a new idea introduced at this late stage of our hearings, something that had not been talked about. I think Mr Sorbara is right; the decision is made at the cabinet table. And Mr Mills is right; they are listening, and hopefully what is said here will be taken back to the people that will be making this decision around the cabinet table. I suspect they will hear about it over the next little while.

But this one is a little bit new, and I think if you were going to be successful, one of the ways to do that would be to have the support of your workers for this particular proposal. I was just wondering if you could comment whether you believe you have the support of the people that work for you for this idea to make it between Thanksgiving and Christmas.

**Mr Posluns:** Based on our experience last year with Sunday shopping, I firmly believe we would have support.

**Mr Carr:** Those same people that were happy to work last year on Sunday would be happy with this.

**Mr Posluns:** Absolutely.

**Mr Teitelbaum:** If I could add to David's comments, typically during that season you do have a lot of students who have classes throughout the week and are eager to find a day in which they can work and earn a little income. Additionally, you have a lot of widows and people that are alone without families who are looking for something to occupy their time during the holidays or the time leading up to the holidays as society gets more festive and they get more depressed. We find there is a large pool of workers



that is untapped, and I think this period of time would particularly be quite attractive to them to come and apply for some part-time work.

**Mr Carr:** In regard to one of the comments you made about the government listening, Mr Rae made the comment—I think it was yesterday or the day before—when he was being interviewed in Whistler, he said again for the umpteenth time, “We want to work with people in the business community,” and he talked about tourism being an important part of it. To me, it will be interesting to see what happens with this bill, how much compromise there is, because in order to be successful, there is going to have to be compromise in a lot of areas.

During this period, if in fact there are no amendments and, for whatever reason, your business is not allowed to open, how much of an economic impact will you be looking at? I do not know if it can be done in terms of dollars. Just where will it put you in terms of being able to survive? We heard from one of the chaps at Hy & Zel’s who said he feels they are right on the edge and this could be the thing to push them off. How are you in terms of your financial situation?

**Mr Posluns:** If you look at the trend in the retail industry and, as Joel mentioned, if you look at the number of bankruptcies, I think the industry as a whole will be impacted dramatically. If you want to look at Dylex specifically, I do not think it will put us into bankruptcy in any sense of the word. But I quoted a figure earlier of losing at least \$200 million in sales to cross-border shopping. If you were to say that 30% to 40% of our revenue falls within that time frame, say 40%, you would be looking at \$80 million of revenue and the profit that would be commensurate with it, and that could be the difference between a very profitable year and a year in which we lost money.

**Mr Carr:** One of the other suggestions that has been made, as you probably know, is that there is no more money available and people do not spend any more, although I suspect your industry would be happy if, as I mentioned to one of the other presenters, people that were going to spend \$50, \$60 or whatever on a dinner, then decide to spend it on Sunday buying something. There could be that choice, although the people in the restaurant industry might lose out. Do you see some of the dollars coming from other sectors where people might purchase on Sunday because they do not have any more money, or will they take the money out of savings? Where will the money come from that will—

**Mr Teitelbaum:** The money will come; it is money that is currently being disposed of in the United States. It will be money that will remain in this country and fuel our own economy for growth and create jobs. I think we all are aware that after taxation, the retail sector is probably the primary means of putting money into the economy for growth and for capital expenditure. If that money continues to flow like a river down into Buffalo and Erie and Detroit and across the country into Washington, then that is where the money is going to come down.

The United States has a population base of a quarter of a billion people. We have a tenth of that, so our \$2 billion

is not a drop in their ocean. But that \$2 billion is well over 15% of retail sales in this country, so I think that is clearly where it is going to come from. Instead of building someone else’s economy, maybe it is time we all start doing something about our own.

**Mr Fletcher:** Thank you for your presentation. A couple of things: First, when Mr Sorbara said no one has really appeared here about being coerced, I see four people sitting at the back who have firsthand evidence of people being coerced. Yesterday in Hamilton, we heard about 40 grievances that are being processed by a union because of working. I am not saying that you coerce. I am not saying that all people coerce. There are some; there are not some. It goes both ways. As far as the recommendations, as far as this draft legislation which is up for amendments by this committee is concerned, and if the opposition members do not want wish to put in any amendments, then they are not going to be helping the process themselves.

But I am really interested in this stakeholder situation. It is something I am on record as saying this morning, if you read the Hansard, that I would like to push for as far as this side of the House is concerned. If the opposition members would support me in getting stakeholders together, of the unions, of the retail people, of local governments, and letting us come up with a workable solution to the situation.

Let’s not have a hodge-podge. I do not want to see that either. I think it has to be something that has some teeth in it—I am sure I am hearing that from you—and something that is going to create a level playing field. If you are willing to be involved with this, we are willing to accept you. Working with government is a two-way street. Banging on a door does not work all the time. I mean, you have to ease your way in sometimes. So far, let’s face it, we have both been antagonists at times. We would have to knock down some of the barriers, and that is going to take a little time. But are you willing to get involved with a stakeholder situation as far as setting the criteria is concerned?

1630

**Mr Posluns:** Absolutely.

**Mr Fletcher:** I am very glad to hear that.

**Mr Teitelbaum:** Mr Fletcher, if I could talk to your point about coercion, I would submit—and I have no evidence to support this but I would be happy to gather some and present it to you—you will find far more cases of people having been coerced to work on a Saturday than on a Sunday. You will find far more cases of people having been coerced to work on a Friday evening than on a Sunday. I do not see how saying that 40 people in Hamilton were coerced to work sheds any light on this issue.

**Mr Fletcher:** Whether you are coerced to work a Saturday or Sunday, it is coercion.

**Mr Teitelbaum:** Right, but I do not see how Sunday shopping really comes into play here. We have already said we support the right of workers of Ontario to refuse work on Sundays, so I think that is sort of a non sequitur.

**Mr Fletcher:** That is right. I know. I was just responding to the answer that you gave to Mr Sorbara.

**Mr Teitelbaum:** I just did not want you to think that things were being directed in the wrong direction.

**Mr Fletcher:** Another thing you are talking about is creating jobs with Sunday shopping. That is what I keep hearing. "We are going to create a lot of jobs." You talk about the United States, and I look at this from an American article: "Current evidence strongly indicates a continuation of the trend in cutbacks in the early part of 1991. Sears Roebuck cut 33,000 employees, including 13,000 full-time. Hills department store is closing 28 of its 214 stores. Computer Factory laid off more than 300 workers and closed 20"—my God, you get down near the bottom and by month-end there are 52,000 jobs lost in the September-October period, all in the retail sector in the United States.

The reason is, and you said it quite well, they are undercutting. If we allow wide-open Sunday shopping, does it not make it a lot easier for them to get into the country? Does it not take away the level playing field? Are you going to have to cut your costs through labour cutbacks in order to compete with the US companies that are already doing it?

**Mr Posluns:** No, I do not believe so at all. In fact, the reason I think we are not on a level playing field is that we, as an Ontario-based corporation with most of our stores here, have to draw the majority of our revenue from this province. They get the majority of their revenue south of the border. They can be open on Sundays and they can gain all the revenue in their territory. It will not matter to them one bit whether we are open here Sunday or not because they can continue to earn their profit south of the border and fuel our demise.

**Mr Teitelbaum:** Sir, if you take as an example The Gap, which is a US-based corporation, they currently have probably 1,500 stores in the United States that are all open on Sunday. They currently have anywhere from 25 to 50 stores in Canada, some of which are, some of which are not, the bottom line being that it is very minor for them if their Canadian stores are open Sunday or not, because those 50 or so extra days a year are not going to amount to a hill of beans as far as they are concerned. As far as we are concerned, where all of our stores or 90% of our stores are here in Canada, that extra day translated across all of our stores has quite a significant impact, whereas it is sort of irrelevant as far as the US companies are concerned.

**Mr Posluns:** The other thing I would like to comment on is that while there is an erosion of retail profitability in the US, if you look at the top firms in the United States and the top firms in Canada, I think you will see that the stronger US firms are getting stronger and stronger, and that those being impacted are not necessarily those retailers along the northern border where they have seen huge increases in sales as a result of Canadians shopping there. In fact, I was just speaking to a US retailer this morning who opened a store in Vermont and the store manager had quoted to the head of the company that 60% to 70% of their shoppers were Canadians in Vermont.

**Mr Fletcher:** Let me personally thank you for your presentation. I think it was excellent. I just have the same

fears I had when free trade was introduced. We were saying what was going to happen years before anyone else and it started to happen, and we were told, "No, it's a level playing field. Don't worry about it." I am worried, and I know that you are worried as retailers when the Americans start coming in.

**The Chair:** Thank you, Mr Teitelbaum, Mr Posluns. Very interesting presentation.

#### SUBCOMMITTEE REPORT

**Mr Sorbara:** Mr Chairman, can I suggest that we deal with the subcommittee report very, very quickly and then we adjourn until 5 o'clock to hear Mr De Boer.

**The Chair:** That sounds fine to me.

**Mr Morrow:** I believe Mr Sorbara had a motion on the floor.

**Mr Sorbara:** But it was going to be taken up at the end of the presentations.

**Mr Morrow:** Can't we deal with that now, Mr Sorbara?

**Mr Sorbara:** Let's see how quickly we deal with the subcommittee report. Then we will deal with that.

**Mr Morrow:** Let's roll.

**The Chair:** This is the report of your subcommittee:

"Your subcommittee met on Thursday, 29 August 1991 and agreed to the following:

"1. That ideally, amendments for Bill 115 should be submitted to the clerk by Wednesday, 11 September 1991 by 4:30 pm to enable distribution to committee members prior to the start of clause-by-clause.

"2. That this committee not sit during the week of 23 September.

"3. Subject to the conclusion of clause-by-clause on Bill 115, ministry briefings for Bills 74, 108, 109 and 110 commence on 30 September 1991."

Any discussion on this?

**Mr Sorbara:** When are we scheduled to begin clause-by-clause consideration about this?

**Mr Morrow:** September 16. That has been agreed to already.

**Mr Daigeler:** Do you have a time for that?

**Mr Morrow:** It is at 10 am, Monday morning, September 16.

**Mr Mills:** Till the end of the week, Thursday?

**Mr Sorbara:** We may be able to get finished more quickly depending upon how the government—

**Interjection:** Is that right?

**Mr Sorbara:** Seriously, we could do it in about—

**The Chair:** Any further discussion on the subcommittee report?

**Mr Mills:** Yes, what do you mean by—

**The Chair:** Do we have further discussion on the subcommittee report?

**Mr Sorbara:** Yes. I would like in respect to paragraph 1 to propose that it be Thursday the 12th. I know it is hard for Lisa to get them out, but my problem is that we as a



caucus are going to be meeting on the 11th. I thought we could just conclude our amendments Thursday morning and we will fax them to you.

**Clerk of the Committee:** My only comment on that is that the reason Wednesday at 4:30 was put out was because of the problems with the mail and because people will be in their constituency offices. I was going to Purolate them Thursday so they would be in members' offices by Friday, because it is an overnight Purolator. As long as I have them early Thursday morning, then I can Purolate them so members can have them Friday.

**Mr Morrow:** It just says "ideally."

**Mr Sorbara:** Yes, I appreciate that. Just as a practical matter, we will probably discuss them Wednesday night at our caucus retreat, and then we will fax them.

**Mr Morrow:** Where is your retreat?

**Mr Sorbara:** Whistler. It's a resort near Vancouver.

**The Chair:** Further discussion?

**Mr McLean:** The clause-by-clause is going to take place on the week of the 16th, and you are wanting the amendments in by the 11th?

**The Chair:** That is right.

**Mr McLean:** They would be dealt with during the week of the 16th. Is that right?

**The Chair:** That is right.

**Mr Mills:** Exactly.

**Mr Sorbara:** Subject to those comments, I move we adopt that.

**The Chair:** Mr Sorbara moves acceptance of the sub-committee report.

Motion agreed to.

**Mr Sorbara:** Now I will withdraw my motion unless you want to deal with it.

**Mr Mills:** Not to be reintroduced any more today.

**Mr Sorbara:** You never know, Gordy. It all depends on whether—

**Mr Morrow:** Mr Sorbara, thank you very much.

**The Chair:** Excuse me, are you withdrawing your motion?

**Mr Sorbara:** Yes, I will withdraw the motion.

**Mr Mills:** We have not got enough members here.

GERRIT DE BOER

**The Chair:** We now have a presentation from Mr De Boer of Idomo Furniture International.

**Mr Mills:** Is that De Boer's furniture?

**The Chair:** No, it is Idomo Furniture.

Normally, I say please make yourself comfortable and have a glass of water, but I see you are looking after yourself quite well. We have approximately half an hour to be divided between your presentation and questions, of which I am sure there will be many, from committee members. Please proceed when you are ready.

**Mr De Boer:** Thank you very much. If you read my submission there are may be a couple of spelling errors in it since I just finished it off this afternoon. Unfortunately,

you always have these hearings during my catalogue time, which is one of the busiest times in my company.

1640

Last Saturday I flew back from Denmark. The clerks at the airport counter could hardly handle the tourist refunds for GST and PST. Amazing where all those tourists found time to shop, considering the fact that most stores are closed all weekday evenings, have to close on Saturday at 2 pm and are closed on Sundays. On reading a Dutch newspaper the same day, it was also interesting to see that they too were dealing with new shopping demands. However, the fight there is whether to allow extended hours four days of the week from 6 pm to 7 pm. They settled on allowing the stores to close at 6:30 pm. What will we settle on here in Ontario? Will the red herring of tourism force retail employees to work both Saturdays and Sundays?

When this legislation was announced at a news conference earlier this year, I was there and I felt betrayed. The emphasis on tourism in that news conference, and the fact that these present proposals will allow such disparities in this province, present the fact that wide-open Sunday shopping will be a reality before the term of this government is up. In fact, this government was giving the criteria to municipalities that would help them justify opening up Sunday retailing.

Two hours after this news conference my fears were confirmed when I appeared before Mississauga council regarding a tourist application that some developer wanted for his mall. The councillors, in just two hours, had the new proposed legislation too, and they used it as a checklist. Cultural, architectural, historic—point after point was used to justify a commercial mall, and they voted to approve the application. There were no restrictions. There were no thoughts to the fairness of the businesses and their employees across the street or in neighbouring municipalities.

On the drive home I thought back to a full-page newspaper ad on Sunday employee working I placed two and a half years ago with the heading, "David, where's the fairness?" I thought a heading today, "But Bob, you promised," would be more appropriate. If a socialist party was not going to address the social needs of this province, who was?

I consider myself privileged. I have a loving family. I have a healthy business. I have the privilege also of being able to close my stores on Sunday and having my employees have a common day off with their families, as well as myself. Can the same be said for other retail employees in this province? It is not so much Sunday hours, but the combination with Saturdays and weekday evenings that is the problem. Locked in, hours away from home, when the family is home.

My US friends have tremendous staff turnovers with their seven-days-a-week shopping. Would you choose retail as a career if you had no weekends, plus a couple of evenings a week? When I told some of my US friends that there was a period where Sunday shopping was allowed in Ontario and I said that I would be closed, they said: "De Boer, you are stupid and you're nuts. We do 35% of our business on Sunday, and you keep your door closed?" I am

willing to take that for the sake of my employees, but I do not want to see a US type of system here in Ontario.

That is basically why I went and gathered three different laws from three countries I do business in, Denmark, Germany and Holland. Basically, why are things different in Europe? First, all retail employees have their own organizations and are fully represented on any issue. In fact, it was very interesting when I read the Dutch legislation. It started with, "I, Julianna, or I, Beatrix, have listened to...." The government must have listed at least 14 different trade organizations of different retail employees. They did not list any retailers. They did not list any tourist organizations. It was strictly a question of the large retail trade organizations being addressed for the legislation they presented. Second, the emphasis on certain social needs is more predominant. In Europe, the Americans like to call it Euro-laziness. I would refer it more to there being a lot of social issues that are treated differently in Europe.

What are those store hours in Europe? In Denmark the ordinary opening hours for regular stores Monday through Friday are to 5:30, limited on Saturday only to 12 noon. In addition, stores can open an additional 10 hours per week at store discretion, but cannot stay open past 8 pm on weekdays. On Saturday, stores must close at 2 o'clock, and all stores must close Sundays and holidays.

There are exemptions in points 2 and 3. You will note that under 3, the stores that are allowed to open on Sunday must be licensed and must post the limited items offered for sale. Also, the exemptions specifically restrict any retailer from combining any two or more into his operation. I think that is something we should also keep in mind in relationship to the pharmacies. Pharmacies are a key issue in Ontario. They are not really pharmacies. They are masquerading as pseudo-supermarkets. I think that issue has been addressed by other people who have made presentations to this committee.

Stores can only open until 12 noon, and I just list again what exemptions there are. In Denmark, they do allow one Sunday per year where, before Christmas, the stores can be open from 10 am to 8 pm. But I really think this is a small price to pay for retail employees who do not work evenings and Saturdays. Also, on the first Saturday of the month, opening hours are extended to 5 pm.

In Denmark, there is the situation where the definition of what retail is and wholesaler is, and liquidators are, would not allow a situation like a Price Club to open. I think, as everybody also realizes, that is something that is really not justifiable and fair in the present legislation.

Hours of opening must be clearly posted on all store entrances, and this is quite clear across Europe, in Germany, Holland and Denmark. Where the retailer in Denmark is responsible about it himself, he must put them in effect for a minimum of one month. He cannot suddenly make changes in the middle of the month. Jumping now to point 9, if there is a violation of the permit granted by the chief of police, then the regular shop owners can complain to a licensing committee. The licensing committee ruling on a complaint is final and cannot be appealed.

In Germany, all stores must close at 6:30 pm Monday through Friday, with the option of being allowed to open

Thursday evening until 8:30 pm. Normal hours on a Saturday are until 2 pm, except the first Saturday of the month where they may be open until 4 pm. For four Saturdays before the 24th of December, the stores are allowed to be open, and they make certain exceptions in summer and before Christmas shopping.

In Germany, also point 3, all drugstores may stay open at the regular hours during the week, including Sundays and holidays, provided that service and sales on Sunday and holidays are restricted to medication, nursing articles, baby food and hygienic personal needs. In Germany, most of the drugstores are what you still would call true drugstores. They are very small sizes, under 1,000 square feet, and they really just dispense medicine. In large communities with two or more drugstores, only one can be open. A sign has to be put up directing customers to the next open store.

"Open for business" even means if you have a bell for customers, because a lot of these individuals also might live above the store. But if there is a bell for customers that also means they are open for business. They get quite detailed on that. Even newspaper sales are quite restricted on a Sunday, to between 11 am and 1 pm. Vending machines are actually under the responsibility of the Ministry of Labour, which I find quite unusual.

The exemptions that they do allow in tourist areas are basically very specific and are devoted to crafts, devotional materials, swimwear, fresh fruit, alcohol-free drinks, milk, sweets and pretty well the things that a normal confectionery store has here. But it is not the situation in Germany that convenience stores are allowed to open completely around the whole country. There are certain areas where convenience stores are also not allowed to be open.

Stores may be opened up to four Sundays per year to tie in with special travelling bazaars. If they have a fair or a Mardi Gras type of event, this may be restricted to designated areas, and the stores cannot be open more than five hours. Other restrictions apply as well. It is strictly controlled by the provincial governments and not that widely used. Also, out of the whole year stores are allowed to open up to two more evenings up to 8:30. They have very constricted hours in Germany. The stores also, like in Denmark, may be open on December 24 if it falls on a Sunday, but then only four hours and they must be closed by 2 pm.

1650

The labour laws are quite strict for retail employees. To prepare for special openings, employees may work an extra half hour before opening and after closing if necessary. That applies to the whole week, not only to Sundays. No employee may work more than four hours on a Sunday or a holiday. Workers are not allowed to work more than 22 Sundays or holidays per year, and none after 6 pm. To compensate employees who work Sundays or holidays in excess of three hours, they must be given the same time off during the next week. For worker protection, any employer with more than one employee must display this law and records must be kept on all employees asked to work Sundays and holidays and for time given off the following



week. The worker protection board of the labour ministry of the provincial government administers this law.

In the Netherlands, enforcement is the key issue that starts all the different regulations going. It is what they call their notification key. You cannot even open up a store in Holland unless you have authorization for your hours posted. If there has not been a posted notice, authorized by the mayor and council, whereon the hours of operation can easily be seen or if these hours are outside of what is posted or on the special holidays, you cannot open the door.

Basically, it just goes through the whole notification process again. You have to apply to city council in your particular area. Irrespective of that, the notification is that the store cannot be open to the public on Sundays, on workdays, before 5 o'clock in the morning, Saturdays after 5 o'clock, on other workdays after 6 o'clock in the evening, and also—I found this very interesting—more than 52 hours per week.

If you look at what most of our stores are at, most of our stores are open 70 hours a week. In Holland, they are restricted to 52 hours. But even at 70 hours we do have people clamouring for Sunday shopping at the same time.

Just skipping to the next page, the local city council has the option to designate one evening open to shop in the week. That is the municipal option in Holland. You can choose either Thursday night or Friday night as your one night for shopping in Holland. They also have the same situation we have in Ontario where, because of religious viewpoints, if someone wants to have another day off then they have that power.

City councils with restrictions, riders and qualifications, can grant up to 14 exemption days in one calendar year. However, at most four days can be a Sunday and those 10 other days whereby the hours can be extended. This is not widely used and hardly ever used for larger stores.

They also go into if it is one of those four Sundays, what type of criteria are allowed for it. But the main thing is that if it does not disturb the competitiveness of the area, it will not be allowed. The approval needed is also from the responsible cabinet minister, ie, federal approval. Because large store openings would destroy the competitiveness of the area, exemptions are mainly for smaller tourist-oriented and bazaar-oriented stores or during their festive times. Then they list some more exemptions which are not dissimilar to our type of exemptions that I think we have in section 2 or section 3 in the present act.

I guess I come from the viewpoint that I do not like to see any type of municipal option. In Europe it is basically provincial control. The options that the municipalities do have are tightly restricted.

But not really knowing where this government is going on certain issues, my first point is that at least we have no exemptions for statutory holidays except for the exemptions that are allowed now under the legislation. At least give retail employees those 12 days or those 10 days in the year where they are going to have that break.

Second, have a cap on tourist-size stores and employees. It is very simple: no cap, big problems. If you get a

larger store starting to open up in a tourist area, you will get cross-municipal shopping. We already see television advertising telling us it is worth the drive to Acton on Sunday. The same store in Acton offers leather sofa sets advertised in the *Toronto Globe and Mail*.

I think if you allow larger stores to open, and I do not even think that the store in Acton is what I would call a larger store, but if you allow the present process to happen in tourist areas, you definitely will get cross-municipal shopping.

Third, limit pharmacies to real pharmacies. As in Germany, restrict pharmacy sales to medication, nursing articles, baby food and personal hygiene needs. I would also limit the size of the pharmacies so that you do not get into the supermarket areas. I think that some groups have mentioned 2,500 square feet, and if they can do pharmacy for 1,000 square feet in Europe, I think 2,500 square feet is more than enough.

Fourth, there should be notification of hours for business establishments to be open. For me, this is a really crucial area. After two and a half years where I have also dealt with this legislation, I think I understand it to a certain extent. After two and a half years, the average cop on the beat has a very hard time trying to decipher this legislation. Because of that, we need a very clear notification process on a door where a policeman when he goes to a retail establishment can quite clearly say, "Yes, he is within the law," or "He is not within the law." I think you will solve a lot of court problems at the same time.

Fifth, give real protection to employees under the Employment Standards Act. Restrict the number of hours that an employee can work on a Sunday and restrict the amount of Sundays an employee can work during the year.

Sixth, help tourists really shop in Ontario. I am quite adamant on this one. What we really need is a refund policy for tourists that will work in this province. I think you would get a lot more tourists shopping in this province if you give a refund policy situation, like they do in Denmark, where they do get a quick monetary refund at border points.

**The Chair:** Thank you, Mr De Boer. The points you make about other communities and how they deal with this are very interesting. We have a limited amount of time for questions, about two minutes per caucus.

**Mr Daigeler:** I really appreciate the very detailed information on the situation in Europe. I actually had requested from our own research services that kind of background and they were not able, at least not as yet, to get me that. I am just wondering where you ever found that very detailed information.

**Mr De Boer:** All you do is phone the mayor and say, "Fax me your stuff." You spend a half-hour on the phone. I was quite limited in the amount of countries I could get it from. I got an estimate on the translation of these three items alone. It was \$8,000. Needless to say, I did not pay the \$8,000.

**Mr Daigeler:** You summarized it very well. I must say thank you for the research that went into it, because it certainly answers most of the questions that I have in that

regard. However, it also points out that really what we are looking at is a whole different outlook on the question of working and shopping, and that really, we are not looking at Sunday rest, we are looking at weekend rest. Or are we very different here?

I have asked the labour movement several times, for example, whether there is any attempt to go in the direction that Europe wants to go, that you close at noon on Saturdays. There is nothing like that there. Plus, we have all these exemptions that we have traditionally had here in Ontario, which make it very difficult to make specific rules for just one sector. I think that is the problem this government is experiencing. We experienced it, and I think the Tories experienced it. You are probably right, if you want to have a common day of rest, you have to be as strict as what you are putting forward here. If not, you might as well say, "Let business decide." I think it is that either-or type of thing. Would you agree with that?

**Mr De Boer:** I would definitely agree with that. The regulations for some of this get even more detailed. I just sort of stuck to what I thought were the relevant main points. Even when you look at the situation where in certain areas, if people are allowed to open for four Sundays a year in Europe, it is irrelevant because they do not work evenings, they do not work Saturday afternoons. I think most retail employees would love to work Sunday afternoons if they could have four weekend days off and if they could have Saturday afternoon off. That is the whole question of locked-in hours. You are locked in on weekends. You are locked into evenings. That is what the situation of the employees is about, and that is definitely what is addressed in Europe.

1700

**Mr Carr:** Thank you very much for a fine presentation. Your summary was great and what you put from some of the other parts of the world is very good as well. From the sound of it, the way you care about your employees, they should be fortunate to have somebody who takes as much time to put all this together to help them out.

Having said that, of all places in the world you have seen, and you have listed Denmark and Germany, if you had your choice and you were Premier for a day, which one would you grab?

**Mr De Boer:** Poland.

**Mr Carr:** Poland?

**Mr De Boer:** If you look at the German laws or the Danish laws or even the Dutch laws, there is no evening retailing at all pretty well throughout Europe. It is a very different kettle of fish than here. Here we are working every single evening. We are working on Saturdays. My employees right now have a hard enough time having to work every Saturday, because that is when we do the majority of our business, and having to work on the evenings. It is hard enough now trying to get employees to work those three evenings and to work those Saturdays. Because of that situation, when you ask, "What country would you live in?" I think of northern Europe or even southern Europe. My German is not so good and I speak a little Dan-

ish, but my Italian is non-existent and so is my Portuguese or else I would have maybe gotten those in too.

**Mr Kormos:** Mr De Boer, Mr Carr talks about the prospect of being Premier for a day. I know what he is speaking about; I was minister for a day.

In his submission, Mr Vandezande quoted the comment in the speech from the throne that the government is going to "provide for a common pause day to help strengthen family and community life while protecting small business and the rights of workers." Like, I am sure, all of my colleagues, trade unionist workers and people in the church community, I rejoiced in that declaration back in November 1990, because we saw a common pause day in the retail sector as one which indeed not only strengthens community and family life but strengthens the role of small businesses because it puts them on something of a level playing field. That phrase has been used a whole lot. I have to tell you when I was able to overcome my shock at this legislation—because I was one of the small group of 19 New Democrats who were in the opposition and voted against the last Sunday shopping legislation because it permitted municipal optioning; we disagreed, initially at least, with the expansion of square footage for some of the types of retailers—we are faced now with a dilemma. Virtually every representation from the trade union movement has said municipal optioning is a less-than-desirable way to do it and it is going to result in wide-open Sunday shopping. Indeed, those people who have traditionally supported and continue to be in support of Sunday shopping, some of them chambers of commerce, do not think municipal options are appropriate either.

What I am suggesting to you is that we do not have to worry about who does the exempting if indeed our definitions of what can remain open are sufficiently succinct and narrow and really reflect bona fide vendors who ought to be open on Sundays to serve certain community needs. You were involved in a pretty enthusiastic and passionate campaign, an expensive campaign, as an advocate of common pause day. Let me, as a member of the New Democratic Party and as a backbencher in the government caucus, ask you this: If the legislation that is in this bill with this municipal option, with this very broad tourist exemption, becomes law, what does Mr De Boer do then?

**Mr De Boer:** I am not going to move out of the province.

**Mr Kormos:** Neither am I, Mr De Boer.

**Interjection:** Start a new political party.

**Mr De Boer:** I would also not start a new party, because basically I could not be in the same position that you people are in. As an aside, also on the party structure, if I was elected, I could not take somebody saying: "Okay, De Boer. Welcome aboard. Now shut up. You can talk during caucus, but don't ever vote the way you want to in the public sector because we're not going to allow you to do it."

That really bothered me. That was my cool blast into politics two and a half years ago. There were people who were quite favourable to our concerns, but I found that—I had just come back from Poland during those times. I was



dealing with some of my factories in Poland and I always had the feeling that in some ways they had more freedom than we had here in Ontario. I found that very sad.

When you ask what am I going to do when this legislation comes out, I am hoping, and that is maybe why I have kept quiet to a certain extent, that during this process you people who are involved in the amendments that are being put forward and the amendments that are being accepted will really see the flaws of this legislation. Because I really think the flaws are quite open and quite wide in this legislation. So I do not think it is a dead duck yet, Peter.

I am just hoping that through your graces you have the empathy for retail employees, because I am also a strong believer that retail employees are not that well represented in this province. The unions really do not have the representation of retail employees, for instance. I think it is under 20%. I do not know what the figure is, but they do not have the representation they do in Europe. If they had the same type of representation they did in Europe, this legislation would not have got as far as it did.

In one way I see myself also as a spokesman of the unorganized retail workers and I am hoping you people realize their plight. It is basically a question of their locked-in hours. If retail employees had four evenings off

and had Saturdays off at 2 o'clock, I would not even be fighting for stopping Sunday shopping.

**The Chair:** Thank you very much, Mr De Boer, for a very interesting presentation, and certainly for information that we have not previously heard.

**Mr De Boer:** I thought I would give a different tack to it.

**Mr Morrow:** With your indulgence, Mr Chair, I would like to thank some people. I would like to thank the more than 50 presenters who have come before us during the last four weeks of hearings. I would like to thank all the research staff. I would like to thank the clerk for putting up with us for this long. I would like to thank them for all the hard work that they are going to do. I would especially like to thank all the people involved here. They have just been fine hearings. And Hansard. I forgot Hansard.

**The Chair:** I would like to add to Mr Morrow's comments very simply that we have come to an end of a lengthy series of hearings. We have had some excellent presentations, but it has been at times gruelling, at times an enjoyable process.

We stand adjourned until September 16 at 10 am.

The committee adjourned at 1710.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
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Poirier, Jean (Prescott and Russell L)  
Sorbara, Gregory S. (York Centre L)  
Winninger, David (London South NDP)

### Substitutions:

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Daigeler, Hans (Nepean L) for Mr Chiarelli  
Kormos, Peter (Welland-Thorold NDP) for Ms Gigantes  
Lessard, Wayne (Windsor-Walkerville NDP) for Mrs Mathysen  
McLean, Allan K. (Simcoe East PC) for Mr Harnick  
O'Connor, Larry (Durham-York NDP) for Mr Winninger

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**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service





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## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 16 September 1991

# Journal des débats (Hansard)

Le lundi 16 septembre 1991

## Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 16 September 1991

The committee met at 1001 in committee room 1.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**Mr Morrow:** I have two motions that I would like to put on the floor at this time. I will start with the first motion, then move to the second motion.

**Mrs Marland:** On a point of order, Mr Chairman: Mr Carr had his hand up first.

**The Chair:** I saw Mr Morrow raise his hand first and I saw Mr Carr.

**Mrs Marland:** That is fine. I want the record to show that you chose to recognize Mr Morrow. I just think that is rather interesting.

**Mr Sorbara:** Another minor point of order, Mr Chairman: I look forward to hearing the motions of the Vice-Chair of the committee. My understanding is that as a matter of the rules of this committee, we deal with one motion at a time.

**Mr Morrow:** That is what I said. I have two motions and I will deal with the first one first and then move to the second one.

**Mr Sorbara:** We are going to speak to and debate the first one? You might intimate what the second motion is going to be and if you have some introductory remarks, I look forward to hearing from you, so long as we are not trying to debate two motions at the same time.

**Mr Morrow:** I would never do that. As I said, I do have two motions. I will now move on to motion 1.

**The Chair:** Mr Morrow moves that clause-by-clause consideration of Bill 115 be postponed to a future date as agreed to by this committee.

**Mr Morrow:** Now, if you will allow me, I will speak to my motion. This committee spent four weeks on the road in 11 cities. We heard from roughly 280 presenters. We had an awful lot of input from the public. They had an awful lot of good things to say. We are not prepared at this moment to come back. We did listen to the public. Therefore, we are asking that this be delayed.

**Mr Sorbara:** Notwithstanding that there was some suggestion by way of urgent phone calls to our party, its caucus, its leader and its senior staff, intimating that the government was proposing to postpone clause-by-clause consideration of Bill 115, nevertheless, coming here this morning at 10 o'clock, I remain rather startled that the government has put forward this motion.

All the more so, I am startled that the minister is not here to address the motion. I see the parliamentary assistant sitting on the committee, but he has not raised his hand or taken the opportunity to be the first speaker on the motion by Mr Morrow. More than that, the remarks of Mr Morrow give no reason at all why the government is bringing forward this motion to delay clause-by-clause consideration, and we would certainly like to hear that.

Mr Morrow is right that we did hear from hundreds of people. The clear majority of the submissions that we heard opposed the government bill, and I want to say at this point that if the government is saying, through its motion to delay clause-by-clause consideration, that it is rethinking a bill that was almost uniformly rejected by the people we heard from. I say almost because there were two or three or perhaps 10 people who came before the committee who said they liked the bill in its current form, but the large majority of people rejected it.

Some, I grant you, notably the United Food and Commercial Workers International Union, wanted an even tighter piece of legislation. They would have had virtually no exceptions to the rule that Sunday is not for shopping. They made their position very clear. But if you go through the research, and indeed our researcher, Susan Swift, has done that, if you go through a summary of the submissions, you will see that by and large, people rejected the government's bill.

I think it would be appropriate for the government to put its cards on the table, play openly with the people of this committee, the members on this committee and, more important, the people of the province. Let us know what is happening.

Your Premier, when he was sworn in as Premier of this province and accepted the responsibilities of being the Premier, talked about a new style of government, a new openness and a new frankness with the people of the province.

I would welcome a statement from the government that it is reconsidering its position. I would welcome a statement from the government that it is examining perhaps providing other criteria to allow businesses that want to open to stay open. I would welcome a statement from the government that it proposes to allow the current legislation, Bill 113, another six months or a year's trial period to see whether it is sufficiently strong to achieve the common pause day that the government is determined to achieve. I would welcome hearing from the government that it was

reassessing its long-standing commitment to the notion of a common pause day.

I would welcome a statement from the government that it was trying to bring forward a definition of "common pause day" consistent with the themes in the legislation. I would welcome a statement from the government that it was looking at a series of criteria to assist those border communities, in particular, that are reeling in their retail sector, that are haemorrhaging badly and pleaded before this committee for the government to act reasonably and allow them to compete with their competitors across the border.

I would love the government to come forward with a statement that it was going to try to come up with something to respond to those small businesses in the Beaches that have been struggling to try to respond to a vibrant Sunday market in their community. I would love the government to say something to the municipal politicians who are going to have to debate this issue during the upcoming municipal elections. It is a sensitive issue. It is an issue upon which feelings get exacerbated rather early during the course of the debate. I would love to hear something or other from government.

We had submissions of a very high quality, I believe, during the course of these public hearings. I am reminded, for example, of the submission from the solicitor for the district of Muskoka who argued passionately and eloquently as to why the government ought not to proceed with this bill. In fact, his arguments went further. He argued that the government should completely abandon the notion that it should somehow provide special regulation for retailing on Sundays. He said, in short, that the government should get out of the business of trying to determine who could and who could not buy a toaster oven on Sunday.

Hundreds and hundreds of hours were put into the preparation of those submissions, thousands of hours of staff time by lobbyists, by groups all over the province, including the United Food and Commercial Workers. My God, we had one woman, Pearl McKay, who was with us almost every single day. When she was not, somebody else was.

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We need to hear not simply that the government would like to put this off but where the government is coming from, even if it is a statement that the government caucus is brutally divided on the issue. That is fair. That is fine. I have been in a government caucus. We have been divided on issues. Come forward and say that. You do not have to name names. You do not have to say that Gord Mills prefers a wide-open Sunday shopping approach but Wayne Lessard feels they cannot tolerate it down in Windsor. That is fair. That is okay. We can listen to that.

But beyond simply us on this committee representing the people of the province, I am thinking about the people who spent all of those hours with this committee, making submissions to this committee. They deserve an answer. They deserve an answer not based on a timetable established by a row in caucus, but in accordance with the timetable established by the Legislature and by this committee and by the government.

It was the government, after all, that proposed, and we accepted, the agenda for public hearings, and we accepted to come back during this week and give all or some of this week to clause-by-clause consideration. We are ready to proceed with the bill if the government so chooses. We would be even more delighted if the government determined not to proceed with the bill, and if that is the determination of government, I believe that you should say so, and we will not make an issue of it. I can assure you of that. Neither in the Legislature nor on the hustings will we accuse the government of backtracking. In fact, we would say that the government has made a wise decision in abandoning Bill 115, and we would look forward to that.

We can exercise our political responsibilities and our legislative responsibilities and our responsibilities for public administration with the highest of standards. If the government has chosen, as we hope and expect, to abandon this bill, then we are prepared to say that looks very good on you, that you have listened to the preponderance of evidence that we heard before the committee, that you understand the problems of retailers in the communities that we visited, that you are sensitive to the fact that although I guess theoretically all of us would prefer that for one day of the week we could all simply sit by our fire-sides, the reality of the marketplace is different. We would welcome that. We would applaud you. We would congratulate you. We would be forced to say, and I think happily, that the government and its members and its caucus and its cabinet have paid attention, by and large, to the people of the province.

You can throw off the shackles of the United Food and Commercial Workers International Union and the other alliances with the trade union movement. It will not destroy their position in society. They have a very effective role and an important role to play, but you at one and the same time can say here and to them that your responsibilities as a government go beyond commitments made to colleagues in the trade union movement. The evidence that we heard argued forcefully for an abandonment of this legislation, and I hope what we are hearing from the government this morning is that it is prepared to consider that.

For our part, we are prepared to proceed. We have worked on the basis that the government was going to continue in its determination to pass legislation not well received by the people of this province, and so we have submitted a package of amendments that would modify the bill, we think, in accordance with what we heard without destroying the bill in the minds of the government members and the government itself. We are prepared to argue, based on the evidence that we heard, that these amendments will make the bill a better bill and more consistent with the people's wishes in this province.

We are prepared, however, to abandon these amendments if you are prepared to tell us now that you will postpone indefinitely consideration of Bill 115 and give the present law time to take hold in the province. That is not to say that I would support that because the present law was passed by a Liberal administration. It is based on the evidence that I heard and that my colleagues on this committee heard during the course of public hearings on Bill



115. We heard many mayors say that they were quite content to provide local regulation for the business of Sunday shopping.

I recall, for example, Stan Lawlor in North Bay saying that although he had been an opponent of Bill 113 when it was initially proposed and passed in the Legislature, he was quite comfortable, thank you very much, and had met with the business community in that city, the retail community, and had come to an agreement. I believe that Windsor and Niagara Falls and Sault Ste Marie and Thunder Bay and Metropolitan Toronto and Mississauga can do the same and ought to be given an opportunity to do that.

The terrible thing about the motion that I have just heard from Mr Morrow is that it says nothing other than, "We haven't made up our minds yet, and we would like more time." This is a breach of faith, I tell the government members, to all of those people who have tuned in today, who have come here today, who are ready and anxious to know the government's position and what the government has decided in light of what we have heard during the past month of public hearings.

I look forward to my friend Mr Morrow's second motion. I hope it will tell us more, but I say to him that in his opening remarks he has disappointed not only the government members but all of the people who have participated in this vigorous debate, not only during consideration of Bill 115 but over the past three years. For a caucus and a government which has been the champion of something called a common pause day to say, "My God, we need more time; we don't know what to do," simply is not enough. We need to hear more and we need to hear more urgently.

We will be very anxious to know what the government's position is, and I want to reiterate that if it is the government's position that it has listened to the people and is willing now to postpone indefinitely further consideration, you will receive our congratulations, our speedy support on this committee and a commitment to assist you if you should ever want again to delve into the perilous waters of the regulation of Sunday shopping. Thank you.

**The Chair:** Thank you, Mr Sorbara. Mrs Marland.

**Mrs Marland:** Mr Chairman, I am yielding my turn to follow Mr Carr, since he is a regular member of this committee. I do have a question on a point of order, however. Is it your intention to take a second motion from the same person without recognizing any other member of the committee with a motion?

**The Chair:** It is my intention to hear debate on the motion that is in front of us.

**Mrs Marland:** You have one motion in front of you.

**The Chair:** At that particular point in time, Mr Morrow or Mr Carr, both of whom have indicated they have motions, will have the opportunity to present them.

**Mrs Marland:** No, I am asking you a question. You know that Mr Carr has a motion.

**Mr Fletcher:** No, he does not.

**Mrs Marland:** Yes, he does, as a matter of fact. Maybe you do not know, but your Chairman knows that Mr Carr has a motion.

**The Chair:** I will get back to you on that point after Mr Carr has finished speaking, Mrs Marland.

**Mrs Marland:** I would suggest that I have never sat in a committee where one person moved two motions at once.

**The Chair:** Mrs Marland, I will get back to you on that point after Mr Carr has finished speaking.

**Mrs Marland:** Thank you.

**Mr Carr:** I think Mr Morrow was correct when he said we have heard from hundreds of people, and I think Mr Sorbara is right when he says that the vast majority of people are opposed to this bill. We heard from municipalities that are opposed to it. We heard from the unions and the retail workers. The consumers are confused by it. Business groups were opposed to it. The tourism groups were opposed to it. I—and I guess I spoke earlier with the Chair before we met—feel I have an answer and a motion that I will table if we get a chance to do it today. Failing that, I will give a copy to the clerk and circulate it to anybody who would like to take a look at it.

I, like most people who have taken a look at this, including the government, think this bill is so flawed that it cannot be implemented, applied and enforced either consistently or fairly. As a result, I think my amendment may be very helpful in that regard. Hopefully, we will get to it, and if we do not, as I said, for any of the members who would like to take a look at it, I will circulate it and give a copy to the clerk, because I think that really addresses what needs to be done.

The government said two things in the throne speech. One was—and I will paraphrase it a little bit; it is not a direct quote—"When we make mistakes, we will admit them." This is a case of, I think, making a mistake, and now it is time to admit it.

We heard from numerous groups, those that are opposed to Sunday shopping—and those who were on the committee heard this more times than they wanted to—and the question I asked people was, "If this bill goes through unamended, will the Premier have broken his promise to the people?" Almost to a person the overwhelming majority of the people said yes. So it will be interesting to see exactly what the reason was for the amendments that are coming through.

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I understand that the Solicitor General had a press conference that he was going to hold last week, but it was cancelled. The reason that we have heard about through some of the papers is that the NDP caucus is divided on the issue.

I think very clearly if this bill goes through, as we heard as we went around the province, there will be Sunday shopping in the province of Ontario. We know Windsor, Niagara Falls, Thunder Bay, Kenora, all the municipalities that have said they will do it.

During the throne speech, the government also said that it will listen to the people to the best of its ability. I am

telling you, if you listen to the people we have heard—and I know Mr Mills said at least 100 times, “We are listening, we are listening”—everyone on all sides of the issue said: “This is a bad bill. It should not go through.”

We will attempt to work with the government, but as my motion will address, I believe this particular piece of legislation is so badly flawed that it could not even be amended to try and get the intention which the government stated in the beginning.

I do not know what time frame they are looking at for bringing this back in. Hopefully, when we get a chance to speak to the motion that I will be bringing forward, we will have a little bit better answer to this problem, because by postponing it and attempting to refine the amendments, I do not think it can be done.

I do not know what the intention of this group will be, whether they will allow my motion to be heard, but I will be circulating it to the members if in fact we do not get to it because of procedural circumstances here this morning.

So, basically, on the one hand, I agree with the government. It has a very difficult task, because this piece of legislation cannot be amended. We will hopefully get a chance to come up with some of the solutions that I propose when we speak to my motion.

**The Chair:** Before we move on to Mrs Marland's comments, my understanding, very simply, is that after the debate and the vote on this particular issue is finished, no one will have the floor unless recognized by the Chair.

**Mr Carr:** It is interesting to see where your eyes wander.

**Mr Morrow:** Mr Chairman, on a point of order: Can I please refresh your memory back to Peterborough when you allowed Mr Sorbara to put two motions on the floor? We debated one and then we debated the other one. You set the precedent then.

**The Chair:** Okay.

**Mr Sorbara:** This is government corruption.

**Mr Morrow:** There is no government corruption.

**Mrs Marland:** Are you raising a point of order, Mr Morrow?

**Mr Morrow:** That is my point of order, sure.

**Mrs Marland:** I would like to speak to the same point of order.

**The Chair:** Mrs Marland.

**Mr Morrow:** Excuse me. I still do have the floor. You did set the precedent in Peterborough when you allowed both motions to go through. Are you saying that you are changing that?

**Mr Sorbara:** Let's speak to that point of order, okay?

**The Chair:** If you could refresh me on that point, were there other motions on the floor at that time? Were there people wanting to be recognized?

**Mr Morrow:** Mr Sorbara said he had two motions to go through. We dealt with one first and then you allowed him to have the floor to deal with the other one.

**The Chair:** Were there other motions?

**Mr Morrow:** That is irrelevant at this point.

**Mr Fletcher:** Yes, Mr Morrow made a motion right after that. He had a motion.

**The Chair:** Mr Carr and Mr Morrow have motions that are forthcoming.

**Mr Fletcher:** On the same point of order, Mr Chairman—

**Mr Sorbara:** With the greatest deal of respect, Mr Chairman, I think given that Mr Morrow has raised a point of order, the appropriate thing is not for you to enter into a debate with him—

**The Chair:** I am not entering into a debate, I am just asking for clarification.

**Mr Sorbara:** —but to allow him to speak to the point of order. I would like to do that and my good friend Mrs Marland would like to do that. I will keep my comments very brief.

Mr Morrow's raising of the precedent represents absolutely no precedent at all. If you recall, in Peterborough I did advise the committee that I was going to be bringing forward two motions. I brought forward one motion. No other member of the committee had an intervening motion and I brought forward a second motion. Each of those motions was debated and dealt with by the majority of New Democratic Party members on the committee.

That is my recollection of the facts. I do not see where the event in Peterborough set some sort of precedent allowing my friend Mark Morrow to bring forward two motions, but it does not really matter. This is all stuff and nonsense. All we need to know is where the government is going to be going on this. Why can we not just hear from you?

**The Chair:** Mr Fletcher, on that same point.

**Mr O'Connor:** Where is your point? Come on.

**Mr Sorbara:** This is terribly silly. Will you not understand that? I just want to know where you are going.

**Mr Fletcher:** I think—Mrs Marland.

**Mrs Marland:** Excuse me. I think I was next.

**Mr Fletcher:** I think so also.

**The Chair:** Mrs Marland, my apologies.

**Mrs Marland:** I think you need a lot of help, Mr Chairman, I say with respect. The point of order that has been raised is the most ludicrous argument I have heard in six years here, for a member to suggest that a precedent was set at another meeting. The fact is that if that took place at another meeting and nobody was bright enough to challenge it under the rules of order by which our committee meetings are held, then that is the loss of whoever wants to challenge it today. The point is that these legislative hearings adhere to our rules of order and nowhere in the proceedings do we have two motions placed at once, at one time, and successively by one member unless they are recognized a second time by the Chair. If it happened at another meeting, it has no relevance at all today.

**Mr Fletcher:** Yes, it does.

**Mrs Marland:** I will try not to interrupt you when you are speaking, so I would appreciate the same courtesy.



Mr Chairman, I would like you to rule on whether you are going to accept the point of order raised by Mr Morrow or not. He has raised a point of order. Would you please rule on his point of order.

**The Chair:** Last comment, Mr Fletcher, on this issue.

**Mr Fletcher:** As far as the rules of order are concerned, I do not see them before me and I do not think the member opposite really does know the rules of order, because when the Chairperson does make a decision, that decision is usually binding no matter what happens.

**Mrs Marland:** I—

**Mr Fletcher:** Do not interrupt me now. If I remember correctly, in Peterborough, Mr Sorbara did come forward saying he had two motions to discuss. He placed the first motion first, which was debated, and then he was going to place the second motion. Mr Morrow also had a motion that would have done exactly what those motions would have done; and you knew that he had a motion. As far as his motion was concerned, we had to wait until after the discussion of Mr Sorbara's two motions. I think a precedent has been set and I think that you should follow along with that precedent.

**The Chair:** Thank you, Mr Fletcher. I think the point very simply is that—

**Mrs Marland:** You have had two speakers from the government side. May I make a further comment?

**The Chair:** I am wanting to simply rule on this issue. As far as I can understand, the situation from Peterborough is largely irrelevant if there was no point of order raised at that point in time. I believe right now we are in a debate about Mr Morrow's motion. At the end of Mr Morrow's motion being debated and voted, the floor would yield to whomever is first recognized.

Who had the floor last? Mrs Marland, on the motion of Mr Morrow.

**Mrs Marland:** On the motion before you, before I make that comment, I have a question of the clerk. Could you confirm for this committee what rules of order these legislative committees sit under?

**Clerk of the Committee:** Legislative committees sit under the standing orders of the Legislative Assembly and the precedents of the standing orders of the Legislative Assembly.

**Mrs Marland:** It would be possible, if Mr Poirier wanted to have a copy of the rules of order, he could get them out of his desk in the Legislature. That is where they are kept.

**Mr Sorbara:** What is she talking about?

**Mrs Marland:** He said he did not have any rules of order.

**The Chair:** Could we return to Mr Morrow's motion?  
1030

**Mrs Marland:** I understand Mr Morrow's motion says that clause-by-clause consideration of Bill 115 be postponed to a future date as agreed to by the committee. Apparently, there is not a typewritten copy of his motion available, so I have a handwritten copy from the clerk.

In speaking to this motion, I would have to ask why the government members are asking for a postponement of clause-by-clause consideration of Bill 115. Obviously if they had any intention of proceeding with this bill they would have prepared any amendments which they wanted to make. I have to wonder perhaps if this bill is going to go the same way as so many of the New Democratic Party government promises, where when they get out into the real world and find out what the real world thinks about their position, then they start retrenching and going backwards very, very quickly. Probably a very good example would be the automobile insurance policies for this province.

I think this government has a lot of explaining to do. It has just invited the public in this province to take part in public hearings and now it does not know what to do with the public input. Perhaps they can explain to that same public why they spent over \$150,000 this summer listening to them. It is the most incredible experience to sit here this morning and find out that you are not ready with amendments.

I have travelled this province for six years on standing committees, looking into having public input into legislation that was in its second-reading referral to committees by the previous government of very complicated bills, some of which some of you might be very familiar with. I would suggest Bill 162 was a bill that had a phenomenal amount of input by the public, and the staff at that time were writing amendments as the hearings were being held, for the government to present at the end of the public input. Bill 162 was a bill on which, I would suggest, there was not any corner of this province where injured workers or unions did not have a presentation at those hearings.

The fact is that this bill, which has a tremendous impact on the people who work in this province, is a bill that apparently your party, when in opposition, felt was very important. It had such a priority that you wanted to deal with it right away. You had so much difficulty with the Liberal government's legislation that you could hardly tolerate it.

That is what I really like, an unbiased Chairman sitting and being coached by one of the members of the government.

**Mr Morrow:** I am not coaching him.

**Mrs Marland:** Anyway, I find this situation this morning is deplorable. It is an insult to the people of this province that you have spent \$150,000 listening to them and you are not ready to go ahead with your own legislation and with your own amendments. If there is some disagreement in your caucus, so be it. You have had a caucus meeting, I understand, you have had your caucus retreat. You still have staff in the ministry who could draft your amendments.

It is deplorable to me that we are sitting here with you saying that you want the clause-by-clause consideration to be postponed, taking up committee time, I may add, from other committees which had work to do this week and could not sit to complete their work because you were sitting to complete yours. Now you are here this morning in this shoddy way saying: "We're not ready, folks. We

don't have any amendments. We can't get on with the business of the House. It needs to be postponed."

If any of those statements are wrong, please tell me. But the motion, as I read it, says, "Postpone to a future date." I have to ask you why. Perhaps you can tell us why you want to postpone to a future date. Maybe if you can explain why you want it postponed to a future date and you can justify what you have subjected the people of this province to this summer, instead of a whole lot of gamesmanship and backpedalling, you can convince the public that what you are doing is more straightforward than it appears on the surface.

**Mr Sorbara:** Where is the minister? Where is the press release? Where is something, anything, that tells us where you are going?

**The Chair:** Mrs Marland, are you finished your remarks?

**Mrs Marland:** I am for now.

**Mr Fletcher:** There are a few reasons why the bill is not ready, because when we went out on the road and we went across the province there was a lot of constructive criticism about the bill, and a lot of people. To hear the members opposite saying that no one liked the bill is a crock.

**Mr Sorbara:** One or two deputants liked the bill.

**Mr Fletcher:** Most of the people—  
Interjection.

**Mr Fletcher:** Now I know where you get it from.

Most of the people who came forward said—and this came from the tourist people and everyone else—"It's a step in the right direction. It needs some fine-tuning." That is what we are about to do, fine-tune it. As far as what we have said in the throne speech and everything else, the Premier said, "We will go out, we will listen to the people, we will consult with the people," and that is what we have done. We are back now with a piece of legislation that is only draft legislation. I think everyone realizes that. It went out for consultation.

**Mr Sorbara:** On a point of order, Mr Chairman: This is not draft legislation. This is a bill that has had two readings in the House. There are people's businesses that are relying on the determination of what we are doing on this thing. For Mr Fletcher to say that this is draft legislation is a crock.

**Mr Fletcher:** You are right, Mr Sorbara.

**Mr Sorbara:** My God.

**Mr Fletcher:** It went out to the public with the intention of there being amendments made. I think everybody knows that, and I think Mr Sorbara knows that. At least when we went out this time, we went out and we listened to the people. I know that when Bill 113 and Bill 114 went out, you did not listen to anyone, and in fact the legislation came back without any changes except for minor changes which did absolutely nothing. Most of the people, in fact, 90% of the people, who appeared before on Bill 113 and Bill 114 were opposed to the legislation, yet it just went through and it got forced through. That is not what this government is about.

Maybe the other members have been around for six years, going out on committee and everything else, and this is a little different, but then we said we were going to be different. We said that in the throne speech and we said that during the election campaign. We cannot cover every person in the province. We have to look at this piece of legislation as if it is for the province, not just for border communities, not just for the city of Toronto. This is a piece of legislation for all.

We are not a divided caucus on this issue. The caucus has spoken on this issue. We are just willing to take it back and show that we have listened, so that people do realize that we have listened to what they had to say. We do realize that it is an issue that many people have many different views on. We are trying to make the legislation a little better, and I cannot understand why the opposition—of course I can, in a way, because I know they have always operated that way: "Okay, we've heard the people. Let's go back and now we'll just ram this piece through." We do not work that way.

**Mr Sorbara:** This is inappropriate.

**Mr Fletcher:** I think it is about time you got out of the old ways of doing things and started listening for once.

**Mr Sorbara:** This is absolutely inappropriate.

**The Chair:** Mr Sorbara, please, would you allow Mr Fletcher to have his time.

**Mr Fletcher:** You have never listened to the people before. That is why you are sitting where you are sitting. That is quite obvious. Now that we see that things are changing around here, maybe you can get on board and help us out a little bit.

**Mr Sorbara:** You tell the people that you do not know what the hell to do on Sunday shopping. Tell the people. Christmas is coming, my friend. People would like to know.

**The Chair:** Mr Sorbara, you are to be given the opportunity to speak after Mr Poirier, but please do not interrupt Mr Fletcher or Mr Morrow.

Interjection.

**Mr Sorbara:** With a comment like that, you are really the avant-garde of the Legislative Assembly. We do not tell anyone what we are going to do.

**The Chair:** Are you finished, Mr Sorbara?

**Mr Sorbara:** Hardly.

**Mr Morrow:** I am not going to sit here and grandstand, so I will not be that long. Look, is it not really refreshing that you have a government over here—

**Mr Sorbara:** That does not know what it is doing.

**Mr Morrow:** —that is listening to the people? As a third-party member said, in previous times they made amendments while they went along with a bill. "What's that? You haven't heard from everybody. How can you make amendments when you haven't heard from everybody on a bill?" We have now heard from everybody. We have had a couple of weeks. We do want to bring in amendments. We have asked that the bill be postponed. It is obvious.



You ask why. You say the people of Ontario deserve an answer. It is really nice that a government sat here and listened to the people of Ontario for a change. Do you want to talk about Bill 113 and Bill 114? Yes, let's talk about them. What did the people tell you in 1988 and 1989 over Sunday shopping?

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**Interjection:** They didn't like it.

**Mr Morrow:** They did not like Sunday shopping. Did you listen? No. We are listening.

Basically, what we are doing is we understand Sunday shopping is a very complex issue; it is very frustrating to everybody. We feel that two weeks to go through 280 presentations probably is not enough time. We want to come back with some very good amendments to the bill. We need time to do that. We are asking for the time. We obviously have not had enough time, and, as I started out, I will reiterate that it is really refreshing that, unlike Bill 162, we are taking the time to bring in good amendments. We did take the time to listen to people. That is exactly what you go on the road for, to listen to the public. That is exactly what we did.

**Mr Poirier:** I look across the committee room here and I have dear friends that I like very much on an individual basis, but as I sit here listening to how this is coming forward, I am amazed, I really am. I cannot help it, having been in government for five years, listening to Bulldozer Bob come forward and say: "Get the hell out of the way. We're there tomorrow morning. At least we know what the hell we want. We're ready to do it," and the whole patente. I have heard that for five years, that we were not fast enough, we did not consult enough, etc.

Here we come forward on Monday, September 16 at 10 o'clock to hear, just like that, no motion written down, "Oh, by the way, we need more time." No explanation given. The minister does not come forward to do it himself. No explanation given, nothing written down, not even an idea of the length of time that is required. For so many years I heard so much determination that the NDP knew exactly what the hell was required, exactly what was wrong with Bill 113 and Bill 114, which the previous government had. "Get out of the way, we will remediate to that immediately."

When the people ask me, "What is it like at Queen's Park?" goodness, I wish they were here this morning to listen to this. I do not understand why you are not ready, why by now you would not have your list of amendments. You have listened to the people. I ask my colleagues here in opposition, would you remember if we would have said something like that or if you, when you were in power, would have said something like this, and say, "We need more time"? As my friend said, Christmas is coming along, the business community needs a hell of a sense of direction from this government. How long will you take? Will you do like the Tories in Ottawa, pass the GST in December for January 1? Are you going to wait until December 24 to decide what the hell the business community is going to do with retail shopping around Christmas time?

There is an emergency to this now. This is September 16, soon Christmas. I just cannot believe the way you are heeing and hawing and whatever. My good friend there talked about fine-tuning. I was talking to my wife last night. I have to bring my car in for a tune-up soon. I do not think I would want to leave my Jeep in your hands because by the time you would bring it back to me I could sell it off at an antiques auction and maybe the tune-up would not be done.

Jeez, you guys are in government now; you are not in opposition any more. You have to pick up your little sock-ies and do something, for Pete's sake. You are dealing like you are still in opposition. You can have more time. What are you going to do, give us hell now because it is not going fast enough? Yes, some people supported it. Yes, some people wanted modifications. Yes, some people thought it stank like hell. We heard the whole gamut, as you know.

But, my God, do you not have the expert opinions by now either in the ministry or politically, to have by September 16 the list? You have heard the same things we have heard. Do you not have some proposed amendments by now? Where the hell are your experts who could translate a feeling of what the people said throughout Ontario to bring forward in time for Christmas, for Pete's sake, the busiest time of the year for the retail people, no matter what you decide? We can respect that, even though we may not agree.

**Mr Fletcher:** It is not the only Christmas in history.

**Mr Poirier:** It is not the only Christmas, but September to Christmas 1991 is going to make it or break it for a hell of a lot of retail businesses in Ontario, and you know that, Derek. No matter what you decide, the ball is in your court, and it is going to be there for a number of years. But if you are going to, as we say, flush to the left and flush to the right and flush to the centre, with what the hell you will have to decide, Jesus, we are going to have political cobwebs in this place. We are going to have parliamentary cobwebs.

Obviously you may be divided on this. Maybe you are. I do not know. It does not matter what kind of debates you have had inside your caucus on this. But Jesus, bring it forward. We have got to look at this. We have got to do this for the people of Ontario, no matter what you decide. Please get into high gear. Do your tune-up, and get into high gear. There is a hell of an emergency to this decision coming forward, and the way it was announced, with all due respect to the Vice-Chair—I like him personally very much. It is how you announce these things. It is how you do not do things, for Pete's sake. Is this going to be another government auto insurance thing? I do not know, but can I make a friendly suggestion? I would like to talk for a hell of a lot longer, Mr Chair, but since there is an emergency—

Interjections.

**The Chair:** Gentlemen, will you allow Mr Poirier to—

**Mr Poirier:** Hey, guys, do something. Look at me, get in gear, tell the PA, my good friend Gord. Grab the Solicitor General by the coat lapels, shake him down a bit but,

damn it, bring something forward, and I hope it is not going to be long term. But the way this was brought about is very, very bizarre and parliamentarily, for me, extremely frustrating because we cannot get our teeth into something. I want to do a tune-up too, along with you. Please, guys, wake up. Get out of the parliamentary coma and get running shoes like Derek has right now. Put all your white running shoes on, but run with the ball. Do it.

**The Chair:** Thank you, Mr Poirier. Mr Sorbara and then Mr O'Connor.

**Mr Sorbara:** Mr Chairman, I want to tell you and the other members of the committee that I find the events this morning somewhat shocking. You will probably know, sir, that we received calls at our caucus retreat on Thursday and Friday asking us not to come this morning, to agree quietly to a postponement of the consideration of clause-by-clause of Bill 115. We had to reject that request because we felt that it was appropriate for the committee to meet and the government to come before the committee and to explain to the committee, and through the committee to the public, the government's position on this bill.

I am just going to overlook the political barbs on Bill 113 and Bill 114 and Bill 162; they are thoroughly irrelevant to what we are doing here this morning. But I want to suggest to the government members, and particularly to the parliamentary assistant, that we must take this stuff more seriously. You are playing fast and loose with the lives of people.

Let me just give you, Gord, one example of what I am talking about. Dylex Corp proposed an amendment through its submissions which would, if accepted by this committee, allow virtually every retailer in the province to remain open for the Christmas season. The Dylex amendment is in force now in the province of Quebec and has—

**Mrs Marland:** Excuse me, Mr Sorbara. May I ask the name of the person who just spoke to the Chairman?

**Interjection:** I am from the whip's office.

**Mrs Marland:** Which whip?

**Interjection:** The government's.

**Mrs Marland:** I thought so. Thank you. Sorry, Mr Sorbara.

**Mr Sorbara:** As I was saying, there was an amendment proposed to this committee by Dylex Corp which would, if it were accepted by the committee and the government, allow virtually every retailer in the province to remain open for the so-called Christmas season from Thanksgiving to Christmas Day, that is, the Sundays during that Christmas season. It is an interesting amendment because it is in force in the province of Quebec, as I understand it, and it seems to work very well and it provides us a kind of catalyst to the retail sector during a very vibrant period for shoppers, for consumers, for businesses, etc.

1050

We wanted to make arguments in support of the Dylex motion, among other motions that we would be proposing. The government has said in effect here, "We don't know when we're going to come back with this bill." Well, there are businesses out there, I tell the parliamentary assistant,

that desperately need to know. They have to organize their workforces. They have to place orders for goods. They have to organize their personal schedules. They have to know. For the government just to come here and say, "Look, would you mind if we postponed this indefinitely?" is unacceptable. You cannot play fast and loose with the lives and the businesses of the people of this province. We need to know.

If the government is saying, "We are completely reconsidering the agenda here," that is okay. We accept that. If the government had said, "We want to do further study on a couple of small points; other than that, we are going to proceed," that would be okay. For my friend Mr Fletcher to suggest that there were too many documents to read in such a short period of time simply ignores the fact that our own researcher has summarized every single submission, and it is here for us and available for us and it is available to the government. So let us not hide behind the length of submissions, and let us not simply abandon the people who are relying on our decision whatever it is.

Once again, I want to tell you that if your thinking is to let Bill 115 die a quiet and natural death, we will not make a lot of it. We will not put it to you in the assembly. We will acknowledge that you see your public responsibilities as a government before the political commitments that you made in opposition, and we will congratulate you.

If you say, "We are examining further three other options on section 4 of the bill, the pivotal section of the bill," then we will ask our researchers to go off and do similar examinations and be prepared to meet you and the amendments which you propose. Or if you say to us, "We need better worker protections and we are scouring the world to find the tightest protections possible," we will scour with you. If you say to us, "We are examining the possibility of setting up some crazy Ontario tourism board to which every business that wants to open on Sunday must make an application," we will meet that argument as well and fight against it. But to say nothing, to offer us silence, not even a date, not even a suggestion that you will be ready by next week or the week after or the month after or the next session, is a complete abandonment of your public responsibilities.

This is not a criticism of the committee members, and I want to make that perfectly clear. I have been in a government caucus and I understand the constraints you are under. What shocks me, what surprises me, what leaves me in disbelief is that the minister is not here to present a position. I know how it works. It is the minister who has asked for more time; it is the cabinet that has asked for more time, and it is the caucus that is the forum for the vigorous debate. I understand how that works. The obligation of a minister is not to hide in some office building, tuning in to this committee by radio or telephone or government whip messenger. The obligation of the minister is to be here, to make submissions. My friend Morrow talked about Bill 162. We had people on Bill 162 every single day, and when the committee was at an impasse or when it needed the Minister of Labour, the Minister of Labour was there.



What do we say to the businesses of this province about the government's policy on Sunday shopping? Yesterday I could have said: "The government has a policy of bringing about a quasi-common-pause day, requiring most businesses to close and setting forward a series of criteria that will allow those stores which can appeal to a generally tourist market to open. The bill includes protection for retail workers who do not wish to work on Sunday."

That is a pretty simple and straightforward bill, and I tell my friend who said there were so many submissions to look at the bill. It is three pages in its English and French version. It is a very short document. Legislative counsel needs about a minute and a half to draw up the amendments once the decisions are made.

As an open government, you have an obligation to tell us where the debate is now. Is Gerald Vandezande prevailing, who of the Coalition Against Open Sunday Shopping, who wants all the stores to be closed and all of us to sit quietly at home for the duration of Sunday? That is a valid position. It is one that I reject, but it is a valid position. Is it his arguments that are going to win the day or is it the arguments of the others who say, "Please get out of the business of regulating Sunday shopping?"

You see, in this area of public policy, there are only really four options. The first is no regulation whatever; the government to get out of the business and cede the territory. That is one option. A number of jurisdictions have—

**Mr O'Connor:** Are they your amendments, Greg? Can we look forward to these?

**Mr Sorbara:** I will cede the floor to you in a few moments.

The second option is the one in force right now, what can best be described as an unfettered municipal discretion to set up store hours in respect of Sundays and holidays in local areas. It has worked so far. We had a period when the courts said there should be no law, and that sort of worked as well. That was the first option, and as I said, the second option is an unfettered municipal discretion.

The third option is basically reflected in the government's proposals in Bill 115, not draft legislation, but a bill that was debated for a second time in the House and has been the subject of public hearings. That option is described best as a narrow municipal option allowing municipalities to allow some stores to open based on criteria established by the province through the statute and through regulation. Municipalities are empowered, but their discretion is fettered and narrowed and constrained by rules established by us here at Queen's Park through the statute and through regulation. That is the option the government chose when it introduced the bill and that is the one it has been arguing for.

The fourth option is to require virtually all stores to close by provincial standard, that is, remove the municipality entirely from the process, state in the statute what stores shall and shall not be open. It is an option preferred, I suggest to you, by the United Food and Commercial Workers International Union and a few other witnesses before our committee during public hearings, the provincial standard option. You will recall that the United Food

and Commercial Workers, in arguing for that option, argued for drugstores of 2,400 square feet or smaller only to be allowed to open, and a number of other positions.

In each of those options, there is some fine-tuning to do, the fine-tuning referred to by my friend Mr Poirier. That is not difficult work. There are some choices to be made, but it is not all that difficult. If the government would tell us, for example, that it was moving from the third option I described to the second option, that would be informative to the public. Those who are here listening today and working for various interests in this debate would be able to go back to their employers and their clients and say, "The government has moved thusly." But to say nothing is an insult and I would say a cowardly act. I am sorry to use that word.

The fine-tuning that needs to be done is a matter of making choices. I realize that this issue is a tough one. I want to tell the members of the government caucus that it was equally tough for us in our caucus. There was no unanimity. There were fights. There were pleas from some members not to proceed at all. There were pleas from other members to go the whole route and just get out of the business. The breadth of debate and discussion was as wide as the issue itself. But government is a matter of making choices; opposition, frankly, is not. We are elected to put another point of view, to hold the government to account. We have choices that we will make on this bill, but really, when you are elected to government, you have to make choices. You cannot simply say to the people: "My God, we can't figure it out. Please give us more time."

1100

A number of us walked a couple of miles or so this morning to get to work, because the government cannot make a choice on whether or not it is going to end the TTC strike. It was a long walk. Fortunately the weather was all right, but you have got to make choices. My God, Sunday shopping is an easy one. The economy is falling apart and the government is not making choices. It made a choice on automobile insurance. I am sure it is one that Mr Kormos did not like, did not appreciate, argued against, but at least a choice was made, and our party says, "Congratulations, you did the right thing."

Now is the time to make a choice. If you need more time to work out the fine points, it will be granted, but let us know where you are going. If it is at all possible, allow for a 20-minute adjournment for the minister to come here and explain to us the quality of the debate and where he is going on it. That is not particularly for us—we will debate whatever amendments you bring forward when you bring them forward—it is for the public.

Larry, you were not with us right through this exercise, but you were with us on many occasions. We had storekeepers tell us that in some instances it was life and death to their businesses. I will quote you. We heard other storekeepers who said, "Please keep us all closed." I remember the owner of a Canadian Tire franchise making that plea, and one who was so appalled with the voice level at the hearings that he decided not to participate. I appreciate that. I can appreciate that if you own a store and you do

not particularly need the Sunday market, you would like all your competitors to be closed. That is a reasonable position. But understand that you cannot just tell the world to put itself on hold while you try and find the politically popular decision. You cannot do that.

We made a decision; maybe it was the wrong one. Based on the evidence that I heard during these public hearings, it was the right one, an unfettered municipal discretion. I still like it after all I have heard, but at least we made the decision. You are right, we took it in the ear on September 6, a year ago, perhaps for the decisions we made, but at least I can proudly say that we made decisions.

We made decisions on auto insurance; we made decisions on Sunday shopping; we made decisions on worker training; we made decisions on a whole variety of things, teachers' pensions, and I could go on and on. Government is a matter of making hard choices. To simply say to us, "We don't know where the hell we're going on this bill," is not enough and not worthy of a government nor a government caucus. I plead with you to send out some messenger to hail the minister and drag him in here and allow him to answer our questions so that we and the public can know where the government proposes to go on this small but important issue of Sunday shopping.

**Mr O'Connor:** It gives me pleasure to be here today to speak on this motion, though it seems that a lot of controversy has been raised around it. One thing I know as a new member, I found that as we toured the province, people seemed to look at us just a little bit differently. They thought these people, these members of the government, seemed to be listening a little bit, and they felt that was something that had not been there necessarily when the committee travelled the province before.

We had the mayors in all the towns that we went to and the mayors who came down here. In fact, one of my own mayors from Georgina came down and made a presentation. He liked what we had, but he wanted some changes. We heard from the mayor of North Bay when we were there, and he was against Sunday store opening and did not believe that the province should be involved in it. We have heard from councils, in the case of Collingwood, where they were very split and where they were going to go with it. As we travelled the province, we heard from chambers of commerce, and they did not like where they were tied in through the regulations.

I am sure the members opposite recognize that it is not very often that a committee of the Legislature gets to tour the province and bring the regulations along with it for discussion. All too often, the regulations have been left up to the ministry involved to take care of, so when you have a full debate going on, in fact you do not have a full debate going on, because all you are talking about is the bill and not the regulations. That was something that was a little bit different, and we allowed people to have some input there for a change.

I felt that it was very open. I felt that it reflected a change in us as elected politicians. I think as members of Queen's Park, the Legislative Assembly of Ontario, our constituents do not always recognize what role we have, whether we are in government, whether we are the opposi-

tion or whether we are even in the third party. But we all have a role, an active part to play in the introduction of legislation, the full debate of legislation, and they do not necessarily understand. So when we go around the province and we offer the opportunity for some input, they really believe they are getting a chance to have some input, and so do I. I do not think we should just decide lightly on a time frame or something and say, "This is what we have got to do today, make up our minds." We have got to make sure that decisions that are made are made with the utmost care.

If we take a look at legislation affecting the legislation we are looking at, if we take a look at the border communities—and we have heard from the mayors of the border communities. They have talked about how they are very hard hurt, they are very hard pressed by this issue, yet we hear those communities are split.

We heard from the municipality of Windsor saying that they want everything wide open. We heard a submission from the mayor of Samia, and he said that council had voted on it, but he campaigned against Sunday shopping. It is a very important issue and it cannot be just dealt with really lightly.

We have heard from retailers across the province, large and small, on both sides of the issue, retailers who do not want to be open because they want to have that one day with their families, that one day of the week when, if their employees choose to have that day off, they do not want to have to make that decision. They would just as soon be closed so that they can share that time with their families.

What we deal with here is market share, and the larger stores can too often take up the market share, which will put the mom-and-pop shop out of business, the ones we go to when we look for our little league and our hockey teams, when we go to them for sponsorship and when we go to them for United Way contributions. We go to those people and we expect them to be there for us. They are a very vibrant part of our community. We cannot ignore their wishes.

As Mr Sorbara said, the unions and their presentations—and on occasion, we heard when they got together with some of the larger retailers. I believe it was in London, where the United Food and Commercial Workers International Union and National Grocers got together and they agreed on a lot of things. One of the members said, "Well, it's nice to see that they finally agree on something." Frankly, when any sort of collective bargaining takes place, when the contract is signed at the end of the day, they do agree on that. That is something they come to agree with. There is a lot of agreement there and there is agreement here on the legislation, but there are still a lot of concerns that were raised that have to be looked at. We just cannot ignore everything that took place.

The mayor of London suggested that we perhaps have a committee to take a look at regulations and maybe fine-tune some of that. The mayor of Hamilton agreed with that. He thought that was something that should be looked at. When we took a look at this legislation we took around the province, we took the regulations with it. We wanted to



make sure that we listened to all sides, because that is part of it.

I am sorry that the member for Mississauga South was not able to travel with us and to have an opportunity to hear people coming and presenting to us. The member for London North, from your caucus, when we were there, said that it was refreshing to sit down and see that there was actually some interaction going on here. She said that she herself was going to make some amendments, and I was looking forward to those amendments.

1110

That is something that we have to take a look at. We have to take a look at all the amendments that do come forward. Ours are not quite ready yet. We have some fine-tuning to do to them, so of the rapidly approaching 300 briefs that were presented, we just cannot tread lightly. I think we need to take a look at what the legislative research has put together. Myself, I know I have been taking a ton of notes. Maybe it kept me alert after some of our fine meals that we had while we were travelling the province, but we do have a lot of resources at our fingertips and we should not ignore them. We should make sure we use them wisely and make our decisions wisely.

I think it would be arrogant of a government to sit down and to ram a piece of legislation through without hearing fully from the amendments of the opposition and I think we should hear from that side as well, because you were elected to the Legislative Assembly by your constituents, not knowing whether you would be on the government's side or the opposition side, just knowing that they wanted you to represent them. That is fine. We were elected to represent, along with you.

At the end of the day, when the votes are taken, then yes, they will pass. But we have to make sure that we hear the amendments. I am looking forward to the amendments from the member for London North when they come forward. I guess the motion of the member sitting with us here, Mr Carr, does not allow for that amendment from Ms Poole to come forward, but I suppose there will be time for them to discuss this now. We will offer you that time so that you can consult with your caucus a little bit more fully, because this is not a decision that needs to be taken lightly.

**Mr Sorbara:** You've done it. You've had caucus retreat.

**Mr O'Connor:** Excuse me. As we look at this legislation, and we talk about business decisions that need to be made, you are right, there are a lot of serious business decisions to be made. The recession we are in is just devastating. We have 980,000 people on social assistance in the province. Since 1989, it has gone up 83%. So when we take a look at decisions, I do not think we would want to be taking things lightly. We have to take a look. What do we do? Do we send everyone out on social assistance to go shopping on Sundays because that will keep the retail business going?

I think we really have to take a look at everything. Everything needs to be weighed with a certain amount of credibility. We have to add some of that credibility that, to us, seems to be lacking. We do not want to make decisions

lightly. We have to hear everything, compile it all together, listen to amendments from both sides of the House and wait for that to come forward, and a second motion may in fact speak to the timeliness that you are talking about.

**Mr Sorbara:** No, it does not. I have already checked it out. It has nothing to do with this.

**Mr O'Connor:** So what we need to do is make the decision with some wisdom. I think wisdom that has been allowed—a little chuckle from across the floor. I am disappointed, because we have heard a lot of partisan rhetoric today. I have to say that I am disappointed by it, because when I travelled the province, I found that the committee here was a very likeable group of politicians getting together, legislators, listening to public input. That is something that we have to try to at least keep in the committee process if we cannot keep it in the House. We need to make sure that we hear from all sides, so that is what we have to do. Decisions are not to be made lightly. With that, Mr Chair—

**The Chair:** Thank you very much, Mr O'Connor. Mr Kormos, you are next.

**Mr Kormos:** Far be it for me, Mr Chair, to prolong the debate, but I feel obliged to make some comments. First, I am no longer a member of the committee and I recognize that, having been pulled from the committee by the whip's office last week, disappointingly but not surprisingly. There is life before Honey Harbour and then there is life after Honey Harbour.

**Mr Sorbara:** You're alive and well.

**Mr Kormos:** And I am alive and well. So not surprised but disappointed at having been pulled, and notwithstanding rationale that might be given for my being withdrawn, it is interesting that my participation during this week was requested by the whip's office through Quick-Mail on those personal computers, which I retained a copy of fortunately.

**Mr Sorbara:** Why do you lose your job every time you take a position?

**Mr Kormos:** Please, Mr Sorbara. I am not going to take up a whole lot of the committee's time. What I have to say I feel is important and some of it is not particularly easy for me to say, so please bear with me. I appreciate your wanting to get involved in this, and we will talk about that later.

**Mr Sorbara:** We can meet privately in my office if you want to.

**Mr Kormos:** I am afraid of the bill I would receive. Do you specialize in unjust dismissal?

**Mr Sorbara:** No, but I can certainly bone up on it pretty quickly.

**Mr Kormos:** In any event, notwithstanding that I am not a member of the committee, of course, as a member of the Legislature, I have a right to participate in the deliberations of the committee and to speak at the committee process. That is a long-standing rule. It is a rule that is a good one, it is a rule that is healthy one, and it is an opportunity that I intend to utilize and perhaps, at the right moment, exhaust.

Having spent two weeks with this committee during the course of its travelling about the province, not during its first week of touring, the northern tour, but during the second two weeks, I shared the opportunity with other members to hear from a variety of segments of communities across the province. I think I have a reasonably good feel for the position that the Liberals or the Liberal members or the Liberal Party have on this bill. I say they are perfectly entitled to that position, and it is a position which carries with it some arguments. There are no two ways about it.

At the same time, it is no secret that I have been, and it should be no secret that I remain, an adamant advocate of common pause day. Just as I, when a member of the opposition, opposed the concept of municipal option, I continued to oppose it. I made no secret of my opposition to municipal option during the course of the two weeks of committee hearings that I participated in. I believe, as do many people in the community, that the municipal option will result in wide-open Sunday shopping. Again, fair enough. If there are people who are advocates, as there are, of wide-open Sunday shopping, then they would be reasonably pleased but for the difficulties that would put municipalities in the interim and the expense that will put municipalities to.

This committee heard from a number of people and heard some sound representations. It heard from a number of organizations and individuals, including the UFCW and retail and wholesale workers and the Ontario Federation of Labour, and perhaps most important, an organization called Fairness for Families, Mr Vandezande, who has been a spokesperson for that organization, which is an umbrella organization representing a number of churches and a number of labour organizations here in the province of Ontario and, I believe, speaking for large numbers, admittedly not all, but large numbers of unorganized retail workers.

It is my view that the representations made by Fairness for Families are not only sound in terms of creating a common pause day, but they also interestingly happen to coincide with long-standing NDP policy. I do not take that policy from Agenda for People or other documents that may be attacked as being ad hoc, but I take it from the Ontario New Democratic Party policy manual which reports the decisions of convention, which is how our party has traditionally prided itself on determining policy.

The policy determined by the Ontario New Democratic Party, which every one of us brought into the election campaign in 1988, was that the New Democratic Party in Ontario endorsed the 1985 all-party committee's recommendations, endorsed the concept and the structure of the Retail Business Holidays Act as it stood before being amended by the last government and before the creation of municipal option, and inherent in that endorsement, recognizing that there was a need for beefed-up enforcement and beefed-up penalties to make the consequences of violation more meaningful, is a rejection by convention. After debate on convention floor and after a democratic vote within the party, there was a strong resolution, a strong

decision, which in my view rejects completely the concept of municipal option.

Yes, I am disappointed that this committee cannot carry on today. I was anticipating and hoping for amendments to the legislation which I could have supported, not by way of vote but by way of voicing my support in this committee. I am not aware yet of those amendments. I have reviewed the Liberal amendments, and once again, I understand the Liberal Party position on this issue and the amendments that the Liberal Party makes are consistent and somewhat consistent with that position.

1120

In view of the fact that there are no amendments before this committee, or proposed to be put before this committee this morning, that would give effect to what I believe to be long-time New Democratic Party policy, and in view of the fact that there are no amendments that have been tabled or filed with the clerk which would create a universal standard, creating a real common pause day for retail workers, recognizing the need for exceptions for certain industries, certain facets of that industry which ought to remain open, in view of that, I am not prepared to be as critical as some of the opposition members are about the delay.

It remains that a lengthy delay would, of course, carry on with the uncertainty, which I recognize, and I think every member of this committee was sensitive to the uncertainty and the concerns that the retail community, that big property developers, that plaza owners, that workers, that community leaders, that politicians at the community level have about the future for their community and Sunday shopping. Obviously, once the status quo is created it is difficult to disrupt that status quo. It is easier to maintain the status quo than it is to disrupt that, for a variety of reasons.

I am anxious to see this committee resume its work as promptly as possible. I, of course, cannot and do not speak for the government, and I have concerns about the fact that lengthy delay would but further harm the goal of those among us who believe strongly in a common pause day, and that is what causes me concern in that regard.

I do point out, however, that the opposition has available to it, beginning next Monday, if not sooner, question period. During that time, I have no doubt they will be reminding this government persistently that the province awaits legislation and amendments for the committee to discuss. I will, at least in spirit, share any legislative member's concern about any ongoing delay. In view of that, I want to make my position clear. I feel I have no obligation, but I join in urging people to—quite frankly, a brief delay is far better than bad legislation, and I have throughout the course of these deliberations felt that this was bad legislation, legislation that will not achieve the effect that we promised during the course of our election campaign, that will not achieve the effect that we are committed to as a result of the democratic party process by way of party convention. I would far sooner see a brief delay than see us contradict ourselves or fail to keep an election promise.

A lengthy delay is another matter entirely, and I am not at this point prepared to prejudge in that regard. I am prepared



to recognize that the opposition can be very effective during the course of, among other things, question period, in making sure that the Solicitor General's ministry brings this matter back before the committee with appropriate amendments as promptly as possible.

I do want to thank the committee members for their hospitality and their charity of spirit, good spirit, during the course of my brief—oh, too brief—two weeks with them. I look forward to the chance again. Thank you, Mr Chair.

**The Vice-Chair:** Thank you very much, Mr Kormos, for that very thoughtful insight. Mrs Marland, please.

**Mrs Marland:** One has to be a little sympathetic with the member for Welland-Thorold, being pulled by the whip from this committee. It seems that the long arm of the whip reaches all the way into this committee room this morning and speaks to our Chairman, the first time I have seen that done in six years. There are certainly wonderful ways of getting messages to the Chairman, if the Chairman happens to be a government member, through the government members sitting on the committee. But this morning all I have seen is total coaching, and I am disappointed that the Chairman seems to take his directions from the staff in the whip's office directly, as something was whispered to him and he nodded. Goodness knows what it was. Is it your turn to go to the washroom? Goodness knows what they said, but it does point out how inept the operation of this government is, and I think that is of major concern to the people of this province, the kinds of things that I see going on here this morning.

I would like to respond to Mr O'Connor's suggestion that it was unfortunate that the member for Mississauga South had not been on the committee this summer.

**Mr O'Connor:** We would have welcomed you.

**Mrs Marland:** I would like to tell you that I have been here six years and this is the first summer I have not spent going around this province asking the same questions of the same people about Sunday shopping. How many times do you keep going back and asking the people of this province what they feel, wish and think about Sunday shopping?

Interjections.

**Mrs Marland:** If there is one subject that has been done to death in this province, it is Sunday shopping.

Interjections.

**Mrs Marland:** And now, having done it to death again—

**The Chair:** Excuse me. Would you please allow Mrs Marland to make her comments? If you gentlemen have a point of order, you would be recognized on that. Otherwise, please allow her to speak.

**Mrs Marland:** Having done this Sunday shopping issue to death, you cannot tell me that your ministry staff are sitting with bated breath trying to find the time to prepare these amendments and, in any case, although I respect the fact that Mr O'Connor says he has volumes of notes and he wants to re-read the researcher's notes, do not try to fool us. I mean these amendments are never going to

be written by the committee members of the government sitting on this committee. You are going to get the instructions from the cabinet and the cabinet will make sure that the ministry staff and the Legislative Assembly staff who are the researchers give them any more information that they need—in the long run, the six members of this committee are not going to write these amendments. If they do, it will be the first time in history.

I think that the concern that Mr O'Connor expresses about the number of people on social assistance because of what is going on in this province is very real, and I sympathize and agree with him. I share the same concern.

I should suggest to you, Mr O'Connor, through the Chair, that you would share the same concern for all those people who are presently losing their income today, last Thursday and Friday because of the TTC strike. If you are really concerned about the people of this province, then I would suggest that you would ask who is sitting on the throne while Ontario burns, perhaps who is mooning out of the Premier's window while the TTC strike is allowed to continue. You cannot be concerned on one hand about the number of people on social assistance and then be pushing people out of their ability to earn money because they simply cannot get to work because we have a TTC strike on at the moment.

I think it is fine to say you are concerned, but when you are talking about drafting amendments and then you go on to talk about how much time that takes and then you go on to talk about regulations—well, we are not talking about regulations here. Regulations will always be a part of legislation. The ministry has the power to write its own regulations. I would hope by now that you know that the committee has no input into regulations, so the regulations are not an issue at all.

I must say it was rather interesting to hear Mr Sorbara talk about some of their debate on this same subject in years past, and the fact that he said there were some who said they should go the whole route and get out of the business. Of course, that is exactly what they did with Bill 113. They did go the whole route, they did get out of the business, and they dumped it on the municipalities, and we know that is not a solution. But for you to come into this committee today and have it so incredibly engineered that the Chairman chose to recognize a government member for his motion first, although the member to his left had his hand up first, it is just a great big sham. We are just sitting here wasting time, as far as I am concerned, because it is all a foregone conclusion. What you are going to do is exactly what you want to do.

You do not know what you are going to do in the long run, because otherwise you would have your amendments here. There is no way that in two weeks your staff could not have the amendments if you knew what you were doing or what you wanted to do. I guess you are just going to sit on the fence, like you have with a number of other issues, and then read a few more polls and finally decide which side of the fence you are going to jump off. So good luck, but I think you are an apology for representation of the people of this province,

and I hope you feel as badly as I do that you have been put in this position by your cabinet.

1130

I recognize that not one of you has a decision to make on this issue. You are getting your orders and it is very obvious, as I said, the orders come all the way from the whip's office. They pull somebody who might be one vote not in accord with you. Is that not interesting?

This is supposed to be the New Democratic Party. I do not think the New Democratic Party knows how to practise democracy where it would be so frightened that the poor little member for Welland-Thorold, Mr Kormos, might vote against it. They are so apprehensive that they have then only five voting members. Well, count how many voting members you need. You have five, and the Chairman can vote if there were a tie with five of us on this side.

They did not need to make this big demonstration of pulling the member for Welland-Thorold. Thank goodness he has a mind and an intelligence of his own, that he would come and see, as a representative of his people, as he sees fit. It is just too bad that the rest of you do not have the intestinal fortitude that the member for Welland-Thorold has to speak your minds on behalf of the people you represent.

**Mr Sorbara:** Maybe you should meet in her office, not in mine.

**Mr O'Connor:** Thank goodness for partisan politics.

**The Chair:** Is that it?

**Mrs Marland:** That is it.

**Mr Poirier:** I was listening to my good friend Larry O'Connor. Larry, you sound so wonderful. I never doubted your sincerity whatsoever, but welcome to government, Larry. There comes a time when you have to stop to listen, at least momentarily, so you can sit down and write a bill, modify it, bring it forward, one, two, three, touchdown. If you want to land with a bill, you have to take off with it first. We have listened. What would you have done when we studied Bill 30 and listened to over 900 presentations, Larry? How long would you need to bring the modifications forward after 900 presentations? A year or two or three? Another mandate?

You guys cannot plead you did not know where Ontario stood on this. We did what we had to do. I enjoyed it immensely, but it is time to take off with it now. Are you proposing that we listen to some more people and do another tour or something? We finished that, as far as I am concerned. Now the time comes, the pleasurable task of government members to gather forth all the different varying opinions you have heard—

**Mr Poirier:** That is right. I am aware of the Tory motion that Gary is going to come forward with.

**Mr O'Connor:** Where is it?

**Mr Poirier:** It is time to listen, to brew all this together, sit down with your partisan and non-partisan experts, since you are so democratic, write down the amendments that you think reflect what the majority of the

people want. But now, lo and behold, you are realizing that not everyone thinks alike. Is that not interesting?

You have a whole gamut of opinions and no matter what you do, damned if you do, damned if you do not. No matter which modifications you are going to bring forward, somebody is going to be cheesed off at you. If it is not going to be big business, it is going to be small business, or whoever. You will have to land with this soon.

Where is the minister? Why are you not coming forward with some lists? You should have had it by now, a list of proposed government amendments, if any, even though the minister and you guys have said that the principle of a common pause day is not negotiable. Moses has spoken. All right, where the hell is your list, if you have it, and when is it coming forward?

You are government now, boys and girls. You will have to deliver. You just cannot say, "We need more time." Democracy has a time to listen, but also a time to do. So you had better come forward with that list of amendments pretty soon or a lot of people are going to be cheesed off inside the House and throughout Ontario.

Larry, those speeches are very, very nice, but it is time for action now, not just words, believe me. You said you have listened to a lot of partisan speeches and whatever. It is not because I am a Liberal that I speak this way. It is also because of what I listened to at the same time and at the same table and in the same places that you listened. You are going to have a hell of a tough deal, because you know no matter what you decide, you are going to get some snowballs with little hard rocks in the middle thrown at you from last year's freezer, or the freezer two or three years ago.

I think with time you will realize that Bill 113 and Bill 114 were a hell of a good compromise, even though I recognize that partisan politics cannot get you guys to admit publicly that it was a good compromise.

Interjection.

**Mr Poirier:** No, that is okay, but remember my words. We will talk about that in a couple of years when, for the next couple of years, the courts are going to be tied up like hell with your so-called designation for tourism. It is going to be a hell of a mess. I have been talking to some chambers of commerce since then also and they are really cheesed off, especially if the law is going to put it in their laps to decide which zones are going to be tourist.

You are going to have a hell of a hornets' nest in your hands for many, many years to come, and the next government that is going to take over from you guys three or four years hence is going to have to really clean up the mess. So, Margaret, get ready.

**Mrs Marland:** Here we are.

**Mr Poirier:** That is right. No, Margaret, you will still be in opposition, but get ready to go again on the road to correct the mess that is going to be happening with the current bills.

**Mrs Marland:** At least we will see our pensions, which is more than you guys will.

**Mr Poirier:** That is right.

Interjections.



**Mrs Marland:** You have to get re-elected once to get your pension.

**The Chair:** Mr Poirier, have you finished your comments?

**Mr Poirier:** I just want to remind Margaret I was appealing to her. I probably will see her in caucus on travelling committees again, but do not get too quick, Margaret, about where the positions are going to be. I want to say that all three parties will have to look at this again together, because there are so many damned flaws and I do not really think that the amendments you are going to bring forward are going to prevent this from being in front of the courts for many, many years to come, with all my due regrets.

**Mr Mills:** There have been some dramatics here this morning. Anybody would think that the world is going to stop. I would just like to say on behalf of the ministry that I do not recollect anyone here saying this morning that we do not know where we are going. We sure know where we are going, but we are not putting forward that point of view at this point in time.

Another statement that was made—I think Greg said it—was that we have no amendments ready. That is absolutely ridiculous. Of course we have amendments, but we want to put the complete package of amendments forward for discussion in this forum. It is a complex issue and we have never dodged the bullet about that. I think that we know and you know that the whole issue has generated more correspondence and more input than any other subject ever in the history of the Legislature. Then Greg says something about having to make choices. I think that is what the delay is, in making choices. I feel it is so important that we have to get it right this time and that is why we are looking at it and we are listening and we are discussing it further.

I am not going to say too much more, but I do take exception, when I may have a different point of view from one of my colleagues, I do not like that to be recognized as a lack of intestinal fortitude, because I think that I have a great big measure of that. Just because my colleague may or may not have a different point of view than I do, I have a role to play on this committee for the minister, and that should not be seen as any less intestinal fortitude than anyone else.

**Mr Sorbara:** It is not so much that we object categorically to the government needing more time to consider where it wants to go, although frankly I do not think more time is asked for in the interest of the public. I think more time is asked for in the interest of politicians and the political flak they are going to take from one side or other, depending on the decision they make.

That is why, in response to Mr Mills, I say that the timetable needs to be set not by the government or the interests of the government, or the political expediency of the Premier or his cabinet or his caucus, but by the interests of the people whom we are elected to serve.

You probably do not realize the extent to which a constituency, the retail constituency and all of its various organizations, has tuned in today to see the results of the work

that they participated in. You probably are not aware of the number of phone calls that come to MPPs and to research offices about what is being proposed, what is going to happen now. That is the real world of public administration, governing and legislating.

1140

I have a great deal of respect for the fact that the member for Welland-Thorold comes before this committee and expresses a view. It is a view with which I disagree fundamentally, but I was not at the NDP policy convention that adopted clause whatever it was calling for a common pause day for retail workers and more. I was not there. I did not participate so I am not bound nor do I have any particular allegiance to that point of view, but I respect the fact that an elected member of the Legislature sits here and discharges his public responsibility, and does so, I might say, with some eloquence.

We talked about parliamentary reform, and yet we have now on the opposite side of this table six government members and one government member in the chair who, through the course of this debate this morning, have not expressed a view, have talked procedure, have thrown a few political barbs but have not expressed a view, have not said that they are deeply committed to the thrust of Bill 115 or would like amendments to move it more in direction A or direction B. At least Kormos came and expressed a view.

**Mr O'Connor:** Have you got a motion?

**Mr Sorbara:** I have a view. I think we should back off from Bill 115.

**Mr Morrow:** On a point of order, Mr Chairman: Can I ask Mr Sorbara please to speak to the motion? That is what the government members have done all morning, speak to the motion.

**Mr Sorbara:** I will speak to the motion. I would like to put forward an amendment to that motion at this point.

**Mrs Marland:** Do you have a copy of the motion?

**Mr Sorbara:** I move that the motion be amended by adding the words "but that the committee, through its Chairman, request that the Solicitor General attend this committee this afternoon at 2 o'clock to answer questions regarding Bill 115 and the issue of Sunday shopping prior to the—"

**The Chair:** Do you have it in writing?

**Mr Sorbara:** No, I do not have it in writing, but I am hoping the clerk is taking it down.

**The Chair:** She is experiencing some difficulty in following it. Go ahead.

**Mr Sorbara:** —"to answer questions on Bill 115 and the government policy on this matter."

The reason I am putting forward this amendment is because I am disposed to support the government's request for more time, although I think you could have done your homework before then, but only on condition that we and the public know where the government is going on this thing. You cannot stonewall. It is shocking that the minister is not here this morning, that he is not available to the press, that he is not available to us, that he is saying nothing.

I tell you that there is now a very large cloud hanging over the question of Sunday shopping in this province. There cannot help but be. The fact that a government, when it is charged with bringing forward its position in clause-by-clause consideration, is simply absent tells the people of the province that the government is deeply divided on the question. That lack of certainty can be overcome by the presence of the minister here at this committee to answer questions and to answer questions to the press as well. We have to know.

The member for Welland-Thorold says we will have an opportunity in question period to ferret that out. Well, I say fair enough, yes, we will, but the appropriate place for those questions to be put and those answers to be given is here in this committee. If the government members will simply nod their agreement, I would be in favour of an adjournment right now so that we can give time to the minister to make arrangements to come before this committee and answer questions. No, it looks like they are not willing to do that.

The thrust of my amendment is to have the minister come here to answer our questions on where the government is going on the issue of Sunday shopping. I am not sure how that links in to the main motion, but I would tell the members that if they are prepared to support the motion to have the minister here and clear up these uncertainties and this cloud that has now arisen, we would be certainly more interested in helping them get through this little bit of embarrassment for the government over its readiness to proceed with its bill.

I just want to say once again that you need to get off the stall button. God, this issue is relatively easy compared to the other issues that we as a province are confronting.

We have a metropolitan area that is paralysed right now without a transportation system. We need the government simply to—

**The Chair:** Mr Sorbara, speak to the motion, please.

**Mr Sorbara:** I am speaking to the motion. If you look at the motion, you will see that it is a motion to defer public business. I am speaking to the question of the deferral of public business, and I think the transit strike is a good example of deferring public business.

I am not saying that the government of Ontario should change its political stripes or its political perspective and bring the Legislature back to legislate an end to the TTC strike. We have made our position clear on that. We think that should happen. We think the collective bargaining process in this instance has gone as far as it could and that the only resolution to this issue is by way of back-to-work legislation.

**Mr Morrow:** On a point of order, Mr Chairman: Will Mr Sorbara please speak to the motion that I originally put on the floor and not to the TTC strike.

**The Chair:** Mr Sorbara is arguing his amendment to your motion. However, he has digressed somewhat from that.

**Mr Morrow:** Does the TTC have anything to do with that amendment?

**The Chair:** Mr Sorbara, please return to your amendment.

**Mr Sorbara:** If I have to set out the linkage directly for my friends opposite, I will do that. Your motion, I say to the Vice-Chairman, is a motion to defer public business, and so we are discussing the deferral of public business, namely, the issue of Sunday shopping. I am speaking about the TTC strike as an analogy. If it turns out that the—

**The Chair:** Mr Sorbara, would you please return to your amendment, which is inviting the Solicitor General.

**Mr Sorbara:** My amendment invites the Solicitor General to come here to explain the reason why the government is not proceeding today on the Sunday shopping bill. That is the substance of my amendment. I am trying to argue by way of reference to the TTC strike why the need to know is urgent not only on the business of Sunday shopping but on the business, arguing by way of analogy in the TTC strike. If that is out of order in parliamentary practice, sir, I refer you to about 130 years of Hansard where parliamentarians are invited to argue by way of analogy. The two issues are strikingly similar.

The government will have to make up its mind whether or not it is going to bring in back-to-work legislation. The terrible uncertainty that exists right now is that it refuses to make up its mind. Cabinet met on Wednesday. Surely to God cabinet was discussing on Wednesday the implications to the province of a rejection by the Amalgamated Transit Union

The policy and priorities committee met on Thursday and discussed the matter again.

**The Chair:** Mr Sorbara, please return to your amendment.

**Mr Sorbara:** Friday, there were further meetings. Monday morning, we still do not know.

**The Chair:** Mr Sorbara, please return to your amendment.

**Mr Sorbara:** I want to tell the Chair that his interference is, in my view, with respect, inappropriate and compromises my privileges as a member. I do not need to work to your time frame nor your view of the way in which I should frame my arguments in respect of the motions that are on the table and my amendment to it. We do not have time limits in this committee and we are invited as parliamentarians to speak to the issues that are before us.

1150

**The Chair:** You are indeed. Please do so.

**Mr Sorbara:** I think it is unfortunate that the Solicitor General has not come here today. I think we could get on with this matter if we simply had an opportunity to question the Solicitor General, and I would put that amendment before you for your consideration. I hope that you will support it. There is a need on our part, on the part of our colleagues in the Legislature, on the part of retail workers, retail business owners and operators throughout the province and the public generally, to know what the government's intentions are on this issue.



All of the reasons that have been given here this morning by government members as to the delay do not add up to a hill of beans. They do not mean anything. They are without substance. The only person who can adequately put the position of the government forward is the Solicitor General, and I hope that the government members will not be so foolish as to vote against this amendment and reject an appearance by the Solicitor General before us to answer these questions.

You have a right to put those questions as well. I grant that you have a better opportunity to put them in caucus where the public is not watching, but surely the real debate ought to go on in this context in this committee, and I urge you to support the amendment.

**The Chair:** Mr Sorbara moves that the motion as put forth by Mr Morrow be amended by adding "but that the committee request that the Solicitor General attend this committee at 2 pm today, September 16, to answer questions on Bill 115 and the government policy on this bill."

Substantively correct, sir?

**Mr Sorbara:** That is exactly correct.

**Mr Morrow:** I am going to speak on the amendment. Thank you very much for giving me the opportunity to speak. As far as I can recollect by the clock, we have been sitting here for just about two hours debating my original motion. At this time, I am going to call the question.

**Mrs Marland:** Are you placing a motion to call the question?

**Mr Morrow:** I am calling the question.

**The Chair:** The clerk would like to explain what the effect of that motion would be.

**Clerk of the Committee:** I just want to clarify that calling the question means we are calling the question on Mr Morrow's original motion and we lose Mr Sorbara's amendment.

**Mrs Marland:** The member who is calling the question has already spoken to it.

**The Chair:** There is no debate on calling the question. All in favour of doing so?

**Mrs Marland:** There are rules of procedure, and he cannot call the question after he has spoken on it.

**The Chair:** I am sorry. Are you raising a point of order, Mrs Marland?

**Mrs Marland:** Yes, it is a point of order, Mr Chairman.

**Mr Sorbara:** You ought not to be bringing in closure, my friends. That is the most foolish option you could choose. I just want to warn you about that. It is stupid. It is foolish. If you are afraid to debate the issue and ask the Solicitor General to come here, you are in very serious trouble.

**The Chair:** Thank you. Mrs Marland, my understanding is Mr Morrow has the right to call the question whenever he wishes to. We are now voting on—

**Mr Morrow:** We have had full debate.

**Mr Sorbara:** He is not allowing the vote on the amendment. Why don't you caucus for two minutes to see whether you really want to do this?

**The Chair:** We are now voting on calling of the question as Mr Morrow moved.

**Mrs Marland:** Is the ruling that it is in order to close debate, to move the motion to call the question when he has already spoken on it?

**Mr Morrow:** We have all spoken on the original motion.

**Mrs Marland:** I am not moving to close debate. That is the only difference.

**The Chair:** As long as in doing so he is not infringing upon the rights of the minority. He has the right to call the question at any point in time.

**Mrs Marland:** The rights of the minority?

**The Chair:** The rights of the minority. If you wish to call that issue into question, you could do so, I believe.

**Mrs Marland:** Well, Mr Chairman, I will call that issue into question because we have four opposition members here. Mr Carr has spoken once, and there have been any number of members from the government speaking, which is possible with seven of them sitting there, for goodness' sake. I think the least Mr Morrow might do is extend the opportunity to Mr Carr to speak before he cuts off debate.

**The Chair:** The only question at the moment is whether or not Mr Morrow's motion is in order. Mrs Marland suggests that Mr Carr should have the opportunity of speaking more than once. I believe most of the government members have spoken already and Mr Poirier and Mr Sorbara have already as well. Any further discussion on this?

**Mr Poirier:** On a point of order, Mr Chairman: May I ask you to confirm the point of order that says if there is a call for a vote, it bypasses all amendments to the main motion that have been brought forward? I thought that with a call for a vote, you would have to deal at that point with the amendments that were brought forward.

**The Chair:** No.

**Mr Poirier:** You are certain of that.

**The Chair:** Yes. When the question is called, it is on the original motion.

**Mr Poirier:** I find that a hell of a surprise, to be very honest with you. By doing that, with all due respect—whoever makes proposed amendments, let's call a vote on the amendment for one thing and then go back to the main motion. But by calling a vote on the main motion to drop all possible amendments to me sounds like a hell of a breach of the standing orders.

**Mrs Marland:** Yes, it is.

**The Chair:** I believe that is correct, Mr Poirier, but perhaps we could recess for a couple of minutes to confirm that.

**Mr Poirier:** Yes. I would think so.

**The Chair:** We will recess until 12. If we can resolve this issue, hopefully we can do so speedily after that time.

**Mrs Marland:** Mr Chairman, we cannot recess until 12 when the committee automatically adjourns at 12 without a motion to extend it past 12.

**The Chair:** No. It does not automatically adjourn. We are authorized to sit all day. That includes the lunch hour. Can we recess until 12 o'clock and return at that point?

The committee recessed at 1158.

1202

**The Chair:** Order. I believe we have substantiated the issue that Mr Poirier brought up, that in fact the vote is upon the main motion. As well, it is my opinion that the main motion has been spoken to at some length so that the call for the question is in order.

**Mr Poirier:** And drops all discussion on the amendments.

**The Chair:** Can we now vote on the question?

**Mr Sorbara:** Can I raise a point of order, Mr Chairman, just prior to the vote? I am just wondering whether the government realizes that it looks very much like, in the face of a call for the minister simply to come and tell us where he is going, the government is using closure to avoid that. That looks very, very bad to the public.

**The Chair:** Thank you, Mr Sorbara. Calling the question on Mr Morrow's—

**Mrs Marland:** On a point of order, Mr Chairman: I just want to be very clear then. You are saying that although an amendment was placed on the floor, an amendment to the main motion of Mr Morrow's, it is in order for Mr Morrow to call the question on the main motion and ignore the amendment.

**The Chair:** That is after lengthy discussion as Mr Poirier, I am sure, can bear out. We have had the finest brains in this place deal with this particular issue. Calling the question always reverts back to the main motion.

**Mrs Marland:** My point of order is asking you who was the source of the judgement.

**The Chair:** The clerk of this committee, my own understanding of the rules as I have gone over them well before this point on that issue as well, and the clerk of all committees in this assembly. Can we move on now to the question? All in favour of the question being put?

**Mrs Marland:** I have never heard of that happening.

**The Chair:** All in favour of the question being put?

**Mrs Marland:** A recorded vote, please, Mr Chairman.

**The Chair:** Yes, a request for a recorded vote.

The committee divided on Mr Morrow's motion, which was agreed to on the following vote:

#### Ayes—6

Cooper, Fletcher, Lessard, Mills, Morrow, O'Connor.

#### Nays—4

Carr, Marland, Poirier, Sorbara.

**Mr Sorbara:** One more little knock at democracy.

**The Chair:** The question is now put. All in favour of Mr Morrow's motion?

**Mrs Marland:** A recorded vote, please.

The committee divided on Mr Morrow's motion, which was agreed to on the following vote:

#### Ayes—6

Cooper, Fletcher, Lessard, Mills, Morrow, O'Connor.

#### Nays—4

Carr, Marland, Poirier, Sorbara.

**Mr Morrow:** I have a motion that I would like to put on the floor, please.

**Mrs Marland:** Are you recognizing Mr Morrow again ahead of Mr Carr?

**Mr Morrow:** I was first, Margaret.

**The Chair:** Excuse me, Mrs Marland.

**Mrs Marland:** I cannot believe this.

**The Chair:** There were three hands here—

**Mr Sorbara:** Let him make his motion. We can deal with it in two seconds.

**Mrs Marland:** It is a sham.

**The Chair:** —in whose direction I was brought.

**Mrs Marland:** Yes. Well, I am surprised. You have got something wrong with your hand.

**Mr Morrow:** Margaret, I had my hand up first. I watched.

**Mr Carr:** Go ahead, Margaret.

**Mrs Marland:** It is so biased.

**Mr Morrow:** I move adjournment of this committee until September 30.

**Mrs Marland:** You know, the one thing about chairmen of standing committees is that generally they are not biased. I think it is unfortunate. You have the votes to kill any motion we place anyway.

**Mr Morrow:** Do I have the floor, Mr Chair?

**Mrs Marland:** I think it is unfortunate what is going on here this morning. I have never seen it before.

**The Chair:** Mr Morrow, you have the floor.

**Mr Morrow:** Thank you very much, Mr Chair. I repeat my motion.

**The Chair:** Mr Morrow moves adjournment of this committee until September 30. Any discussion?

Interjections.

**The Chair:** A motion to adjourn is not regularly debatable. However, when it has a date, it becomes debatable. Any debate? Mr Carr.

**Mr Carr:** Thank you very much, Mr Chair. I guess I do not want to get into the situation of who got their hand up first. It was very clear. I came in this morning, I said I had a motion and had the courtesy of circulating it to the two opposition parties so they could see it. Let's face it. They can vote any way they want, getting on the record. The essence of the motion is there.

What I am upset about more than anything else is we try to rush through and get our hands up before the next guy because we do not want to be embarrassed by anything, yet at the same time we have a Premier who says that he wants to listen to the people, that his government is



going to be different and when there are mistakes made will admit them. We see no change. We have still got the games that are being played in committees, where people come in to try and get motions because they are a little embarrassed about what might be said.

Very clearly the people of this province said this bill stinks, period, end of sentence. But instead of dealing with it, all we have done now is postpone it. The people of this province who came in, on both sides of the issue, whether they be the people for or against, said: "This bill is terrible. We don't want it. You need to make the changes necessary." Instead of admitting that, the government is trying to hide behind a veil of amendments that will change it. I do not think it can be done. I think this bill is so flawed, and I will bow to the judgement of some of the people who are lawyers, but I cannot see that any amendments are going to change this bill to make it any better.

Instead of fooling around and playing games in committee, going back now, I think what should happen is the government should admit it and say, "For whatever reason, we made mistakes, just like we did on the oath to the Queen, just like we did on the auto insurance bill," and at least be honest with the people. People would understand that.

It is like Margaret Marland when she was in with the chairman of TVOntario and he tried to defend the nine TVs in his office. Instead of saying, "I'm sorry. We made a mistake. It was wrong. I don't need nine TVs," the character tries to defend it, something that is undefendable, just like this piece of legislation. They try to defend it and it cannot be defended. It is so flawed that no amount of amendments are going to change the intent, whatever the intent was.

I guess what bothers me is we had a Premier in this province who went around during our committee hearings and said: "We're still for the common pause day. We're going to stick to it."

We had a Solicitor General who came in, who sat in that seat and did not realize what the people in this province had been saying. When I told him we would have Sunday shopping in this province, in the vast majority of places, and named the Niagaras and so on, the look on his face—and I guess I have dealt with politicians enough; I know when somebody is saying something for one reason—he was shocked. He did not even know what was happening in this committee.

Mr Chair, I will be voting against that. I had wanted at that time to talk about it. I guess it is just like what happened when this committee met and the Premier of this province stood up in the House and said over the conflict-of-interest bill: "We want to hear from the opposition parties. We want to have input." Less than two hours later Evelyn Gigantes, the member for Ottawa Centre, invoked the same amount of closure because they did not want to have debate, although the 30-second clip on the TV that night was of the Premier saying, "We're open, we're honest, we want to hear from the opposition parties." The reality is when you get in the committees, the fact is the opposite.

It is one of two things: Either they do not know what is going on in the committees or they do not care. I guess my feeling is that for this committee to now postpone and not talk about some of the debates of what a member wants to bring in, something that I think would be helpful, all we are saying is: "Go back and start over again. This piece of legislation is so flawed that nobody likes it in this province, but at least come clean with the people and be honest with them and tell them why you are going back and not have some type of charade as has gone on here this morning."

When I got into this as an opposition member and as a business person, I thought we were going to try and be constructive when you got into politics, but I guess I was living in a dream world when I actually thought that a member of the Legislative Assembly in the province of Ontario would have input on the committees, because obviously you do not. Whether it is conflict of interest or Sunday shopping, if it is not in their interests, what they will do is simply close you off and shut you down. That is all I have to say about that.

**The Chair:** Is it agreeable to committee members that we adjourn debate on this particular motion until 2 o'clock?

**Interjections:** No.

**Mr O'Connor:** Just keep sitting here. Just keep going.

**Mrs Marland:** No, it is agreeable.

**Mr Morrow:** No, it is not agreeable.

**Mrs Marland:** What do we need, unanimous agreement?

**The Chair:** Yes.

**Mr Sorbara:** Okay, well—

**The Chair:** It is not apparent, Mr Sorbara.

**Mrs Marland:** That is fine except for those of us who have appointments booked in now.

**Mr Sorbara:** I really cannot believe it. I will be speaking at some length on this motion, probably till about 5 o'clock when we adjourn for the day, and then perhaps for the next two or three days if it is necessary, unless the government shows some sort of indication that it just wants to be reasonable. Is it not reasonable that we simply have a lunch break, get back, wind up this discussion this afternoon and then go about our business? Why have you come here to wage war this morning? What is going on over there? We criticize you, we think appropriately, because you both postpone—

**Mr Morrow:** Mr Chairman, on a point of order: I know this is not a real point, but if you can give me two minutes so that I can have a chat with Mr Sorbara, I would very much appreciate it.

**The Chair:** Are you suggesting recessing for two minutes?

**Mr Morrow:** I would like a two-minute recess.

**Mrs Marland:** Excuse me, this is a sham. That is not a point of order and I am not going to sit here and tolerate it.

**Mr Morrow:** I just said it was not a point of order, did I not?

**Mrs Marland:** All right then, why did you raise it as a point of order?

**The Chair:** What we are looking at is some way of dealing with the business that is before us. Mr Morrow quite rightly pointed out that is not a point of order. However, he is attempting to resolve the situation with Mr Sorbara and Mr Carr, I am sure. It seems to be a reasonable suggestion that we recess for a couple of minutes in order for that to occur. Is that the will of the committee?

**Mrs Marland:** Not until I have spoken.

**The Chair:** You have.

**Mrs Marland:** Do you want me to raise a point of order and play the same game?

**The Chair:** We will recess for two minutes.

The committee recessed at 1213.

1219

**The Chair:** Is there unanimous consent to recess until 2 o'clock?

**Mr Morrow:** By agreeing to have lunch until 2 o'clock, can I verify that we do not lose the original motion on the floor?

**The Chair:** No. We pick up business where we left off.

**Mr Morrow:** Then you do have consent.

**The Chair:** Mr Carr spoke last, and after Mr Carr would be Mr Sorbara and then yourself.

**Mr Morrow:** You do have consent then.

**The Chair:** We have consent to recess until 2 o'clock.

The committee recessed at 1220.



## AFTERNOON SITTING

The committee resumed at 1405.

**The Chair:** When we left off, Mr Carr had finished his remarks and Mr Sorbara and Mr Morrow wished to speak. I wonder if there are other people who wish to speak at this moment.

**Mr Carr:** To drag this out a bit so they can get here?

**The Chair:** Any further speakers?

**Mr Poirier:** What we are discussing right now is just prior to the vote on the main motion, as called for by the Vice-Chair, correct?

**The Chair:** The motion was to adjourn the committee until September 30.

**Mr Poirier:** That is right..

**The Chair:** Mr Sorbara, would you like to speak? You were on the list here.

**Mr Sorbara:** I am going to try to keep my remarks as brief as possible. Some of what I have to say on this motion will reiterate what I said earlier this morning. I can accept the government's request for a delay. I can accept the fact that the government needs more time to carve out what I hope will be a new position on the business of Sunday shopping. I guess the thing that disappoints and surprises me is that we have no indication today where the government is going on this bill. If it were just me, it would be insignificant. Who cares that I am at a loss to tell my own constituents what the bill on Sunday shopping is going to look like.

I want to tell you, Mr Chairman, that on Tuesday of last week I asked members of our caucus staff, our caucus research office, to get in touch with Mr Mills or the minister himself or someone in the minister's office to provide us with an indication of how the government was going to respond to what we heard during the public hearings. I will tell you in open committee the reason why we wanted that information.

We do not want a lot of political grandstanding on this bill. We accept that the government had a policy supporting the notion of a common pause day. We do not think the government has achieved that through its bill—I think Mr Kormos's remarks this morning were as informative as any need be on that score—but we accept the fact that you wanted to proceed with the bill. It was our view that if the government were willing to allow some more flexibility in the bill, we might be able to proceed very quickly through these clause-by-clause meetings that we were scheduled to begin today.

In other words, we accept the fact that the government wants to replace the law we put on the statute books of the province with something different. We accept the fact that you do not want to simply rehash our bill. But we tried to organize and arrange some sort of meeting with you, with Gord, with the minister, with the policy adviser or with the communications person, to see if there was some sort of accommodation that could be made so that we could move expeditiously through this part of the consideration of the bill.

We were hoping that perhaps the Dylex amendment would receive the support of the government. The Dylex amendment, as you recall, provides for the unfettered opportunity for retail businesses to open on Sunday during the Christmas period. I understand that would be difficult because Christmas shopping is anything but tourism; it is a completely different brand, if you like, of Sunday shopping.

We were also interested in seeing if the government would expand what we consider to be narrow criteria for allowing stores to open. We were looking for the addition of economic development as another basis upon which municipal councils could divert from the so-called common pause day. We were looking for, and continue to look for, the elimination of the arbitrary distinction between drugstores of 7,500 square feet or less and those which are 7,500 square feet or more.

We appreciate, I say to my friend Mr Fletcher, that this part of the act was a mistake our government made. We are responsible for that arbitrary distinction. We acknowledge as well that consideration of an amendment of that clause would have required unanimous consent of the committee, because technically we are not considering that section of the bill and would need unanimous consent to open up that chapter, if you like.

We were anxious to see whether the government would look at some other approaches to the hearings process, to expedite it and not put a big administrative burden on storekeepers, on store owners and the municipal councils that have to hear their applications.

All of these things I think emerge, in our view, from what we heard during the course of public hearings. Right now I am in the dark. I have no idea what the roadblock is and the public has no idea what the roadblock is. I want to tell my friends on the other side, and through the parliamentary assistant in particular, that we will wait by the phone for your call when you have things to discuss with us relating to this bill.

I obviously do not speak for the Tories, but for our part, a reasonable set of amendments arising from the general consensus, if I can go that far, that we need to be more open and more flexible in our regulation of Sunday shopping, would be welcome. If we had our druthers, I reiterate, we would simply abandon this bill and allow the municipal option as it now stands to be the law of the land, because we believe it is working.

If you choose to go that far, I reiterate, we will not make that shift in policy an embarrassing moment for you in the public context. In fact, we are willing to applaud you for a shift that I think responds to the public and to the requirements of the marketplace in most communities in Ontario. I plead with you not to leave this matter undecided for a very long time. My plea comes not on behalf of a political party, but on behalf of a community that is crying out for some certainty. Even if you want to go the whole route and close everyone down on Sunday, that will be better than lack of certainty. Storekeepers have to make

arrangements for the way in which they are going to conduct their business.

We had for a while a sort of tourism exemption under the law that preceded Bill 113, and then we changed the law to a municipal option that we thought would allow individual communities to set their own patterns. Then the court threw that out, and then another court brought it back in, and then there was an election, and then the government determined to do something else, and today it says it is not sure where it is going. This is unfair to a part of our economy that is reeling with the economic downturn and the recession. It is so difficult to be competitive any more in the retail sector.

All of us heard the submissions from people in border communities about the fact that most people routinely cross the border now to buy their gasoline. I had a similar experience last night in north Toronto with the differential in the cost of gasoline as between any Ontario city and the cities in our border communities. I stopped at a gas station and beside me was a tourist who had come from Cleveland, Ohio, for a few days, including for the purpose of seeing a performance of the Phantom of the Opera. As he was pumping his gas I was going by him, and as he saw the numbers click up he said to me, "How much does this darn stuff cost anyway?" I said, "It's right there, 55 cents a litre." "How much is that for me?" In other words, how much in American dollars and in US gallons. I said, "About \$2.40 a gallon." You could almost hear his heart skip a beat.

We know from our experience that in Windsor, Sarnia, often Thunder Bay, Cornwall and so many other border communities, people routinely leave their own communities, cross an international border to buy gasoline and cigarettes and beverage alcohol and perhaps a jug of milk and perhaps a toaster oven and so many other things. This is having a terrible impact on the retail businesses in those communities and elsewhere. They need certainty. They need to know the context in which they are going to have to compete. They are going to need to know whether or not they are going to be able to open their doors on Sunday to a marketplace which is indisputably there. It is this government that is going to make that decision and this committee that is going to have an impact on that decision.

The urgency is real, although my friend Fletcher from Guelph would pretend it is not. For example, a number of municipalities, including Hamilton-Wentworth and Niagara, are about to consider passing bylaws under the existing act to allow more opportunities for storekeepers to open. That is happening right now in municipal councils around the province. So you are not surprised, I should hope, that I say to you that people need to know the government's position.

It is now time for a decision. It is now time to make choices. I hope and pray that your choice reflects a more open, more flexible policy to allow the marketplace and individual communities to set the pattern. I agree wholeheartedly that the interests of retail workers have to be right at the centre of whatever we do, but we have the opportunity to strike off on a new course. I plead with my friends on the government side to encourage the Solicitor

General, his cabinet colleagues and your caucus colleagues to do what is right, to come back to this table even before September 30—we will be willing to do that if you can get it together that quickly—with amendments that allow the businesses in this province, the retail businesses in particular, to compete in a fair and effective way.

I really am terribly disappointed, not so much for the delay but that the delay was accompanied by a stark and ominous silence. You have cast uncertainty on to the marketplace, and uncertainty is the one thing the marketplace cannot long tolerate. The time for making decisions has already passed. We hope you will discharge your responsibilities and allow us to proceed with this bill in whatever form as soon as possible.

**Mr Morrow:** I appreciate being given the chance to say a few comments. If we look at both opposition parties, neither opposition party has basically spoken to the motion or the date, so therefore at this point I would like to call the question.

**Mr Sorbara:** You guys are absolute cowards. Let's vote. You cannot even let this motion be debated and allow MPPs who have come here this afternoon to debate the bill to have their say. That is a cowardly act.

**The Chair:** Mr Sorbara, please.

**Mr Sorbara:** It is disgusting; closure on day one. You guys are in for it. Put the question. This is not debatable. Let's have the vote.

**Mrs Marland:** Do you realize that only Mr Sorbara has spoken to your motion?

**Mr Fletcher:** You spoke.

**Mrs Marland:** I did not speak to this motion. This is your second motion.

**Mr Sorbara:** The cowards have spoken.

**The Chair:** Excuse me—

**Mrs Marland:** I am just informing him informally that no one has spoken from our party on this motion, Mr Morrow.

**The Chair:** Mr Carr has spoken. Mr Poirier spoke on a matter of clarification, not on the motion.

**Mr Sorbara:** Mr Chairman, you are required to put that motion now.

**The Chair:** Excuse me, I am not.

**Mrs Marland:** No, you did not speak on this motion.

1420

**The Chair:** Yes, he did. Mr Poirier asked a question of clarification. He did not speak on the motion. Is it your intent to speak on the motion, Mrs Marland?

**Mrs Marland:** Yes.

**The Chair:** Please go ahead.

**Mrs Marland:** Thank you, Mr Chairman.

Interjections.

**The Chair:** I am sorry, but my ruling is simple and it is that we have not had an adequate opportunity for you to speak. Mrs Marland, please go ahead.



**Mrs Marland:** I appreciate that very much, Mr Chairman. It is unfortunate the government members do not wish to hear what the opposition has to say.

**Mr Cooper:** I do.

**Mr Mills:** I do.

**Mrs Marland:** Yes, thank you for saying it. It is funny, this morning we had seven members and now we are down to three government members.

It almost seems that sitting as a member of this committee today is an exercise in futility. When each one of us is elected to serve our constituencies as a member in this Legislature, each one of us is given both a privilege and a tremendous opportunity. It is ironic to sit here and witness what is going on by the government members of this committee, who by their own party platform say that they are the protectors of the people. You would think nobody ever cared about people until their party came into office as government in this province. They lay claim to be the only people with compassion, the only people for workers' rights, injured or otherwise, yet they are willing to say that it is okay to lose another two weeks and continue the chaos on the subject of Sunday shopping that exists today in this province. We have already had two weeks and now you want to delay it a further two weeks.

If you listen to your own source of support, if you listen to the people who I assume voted you into office, it would not take you a month to write amendments to make this bill at least support their viewpoint. The amendments may not be amendments we can support, but at least your own amendments, some of them, must be very straightforward for you to prepare, because you know the viewpoint you want to represent and you know the people's concerns you want to focus on.

It is funny, but I was just reading some notes on this bill and I did not remember what the former Solicitor General, Mike Farnan, had said in the Toronto Sun on June 8. Apparently he admitted that worker protection provisions of the bill are flawed and that it will be difficult to protect workers who refuse to work Sundays. For a political party, now the government of this province, which claims its whole reason to be in office is to protect people, and in particular from things we hear constantly from this government to protect workers, how could you not have brought forward an amendment, if it was possible to amend this bill, to cover even that concern alone?

I am quite sure the two opposition parties were not asking you to bring all your amendments today. It certainly happened in the past that we have not received all three parties' amendments on the first day you start doing the real work of the committee, which is making amendments to legislation to try to make it work.

We happen to feel this bill is so bad that it cannot be amended to make it work. But I am sure, since it is your bill and you drafted it, that you must think it can work. Is it not rather ironic that if you do not have amendments today, perhaps you think the bill is okay? That is always a possibility. The bill was drafted with your direction. It was drafted based on a lot of information that existed from last year and the year before that and the year before that.

Nothing has changed except the government, the government that professes to care for the people who work in this province, the government whose party professed to care about a common pause day to protect people who chose not to work on Sundays, and yet this same government introduces a piece of legislation that does not protect the very people you promised in each one of your campaigns a mere year ago that you would protect.

I notice also that the new Solicitor General, Allan Pilkey, told this committee that the NDP will not budge on the principle of a common pause day. The quote is from the Toronto Star, August 16, 1991, and the quote attributable to Mr Pilkey is, "The principle of a common pause day is not up for negotiation." Well, if your Solicitor General, whose bill it is, has made some statements that now are being questioned, how is it that you cannot address what is being questioned? How is it that you cannot get on with the business of proceeding with this bill?

The fact is that the question of a common pause day is up for negotiation. It is up for negotiation every Sunday in every month in this province today. You know what is going on across this province, and whether you are for or against a common pause day as individuals, you hold a very real responsibility to those people who elected you. Maybe you have not done what I have done. To my knowledge, I am the only member in the Legislature who held a public forum on Sunday shopping, the only one. I challenge any one of you who is going to be voting on this closure motion for the next two weeks of silence on behalf of the government to tell me how you have canvassed those people who voted for you in your ridings. What kind of canvass have you done? Have you held a public forum on Sunday shopping? Have you sent out a questionnaire? What have you done to find out what the people who put you in this privileged office want you to do about Sunday shopping?

If you do not have that answer, then I say with respect to my friend the parliamentary assistant, do you have the intestinal fortitude to vote to represent those people who gave you this privilege as a member of provincial Parliament? If you do not know what your constituents want, then you do not have a right to vote to put off this issue for a further two weeks on top of the two weeks that has already passed when normally in any committee that I have worked on, after two months and three months of hearings, we have had the amendments prepared within one week.

We are in a situation where Sunday by Sunday people are forced to break the law because municipalities are at variance with their neighbour municipalities. We have such a zoo out there where the municipalities individually have the choices. They have the choices about tourist exemptions, and they have the choices about whether or not they will pass bylaws on individual types of retailing or exempt individual types of retailing. We have such a mess that I think to sit back and say: "Well, we will put it off. We will have a month." I do not hear any motion today that says that on September 30 you are going to bring in amendments, and that is the part I find appalling, because as was said earlier this morning, we do not know what

your opinion is or where you are coming from except from these trumpeted messages that keep coming down from the whip's office.

1430

I would like to see you strong enough as individuals to decide that you have an obligation to vote on this committee to get on with the business you were elected to do, and to defer something for a whole month from the end of public hearings is not a businesslike approach, I suggest to you. If you want to prove that you are a responsible government, then get your business hat on and act in a businesslike fashion. That does not mean that a whole month after public hearings you may bring in amendments. I would like to ask the parliamentary assistant if this motion before us now, the deferral of dealing with amendments till September 30, means that on September 30 he will have amendments before this committee?

**Mr Mills:** All things going well, I believe that is the intent.

**Mrs Marland:** That is the intent.

**Mr Mills:** I think that—oh, I must not speak.

**Mrs Marland:** No, I am asking a question through the Chair, so it is in order for you to answer.

**Mr Mills:** I think there are a lot of concerns being shown here that in my opinion are not warranted. I would just like to say one thing. You ask me, "Have you polled your people before you answer this?" I would like to tell you for the record that I write a column for the Canadian Statesman, the Orono Weekly Times, the Port Perry Star, the Scugog Citizen, the Courtice News, and all those newspapers cover the length and breadth of my riding.

Some time ago, when this was a big issue, I said to the folks out there: "I want to know. Everybody wants to have Sunday shopping, but nobody wants to work on Sunday. How do you feel about it?" I must say—it may be unique—that the response in my riding has been very low-keyed and almost negative. For my own riding, Sunday shopping has not come across as the all-engrossing issue we perhaps tend to think it is. I tell you that honestly, Margaret. You can count on two hands the people who have approached me through this outreach approach to all my constituents, "What do you think about it?" They have not come to me. Thank you, Mr Chair.

**Mrs Marland:** Thank you for that answer, Gord. I do believe that in your case you are being quite open about that. It is interesting, however, how your own position actually is contradictory to Vice-Chair Mark Morrow's position. He said this morning that this is such a big issue, is so important that this is why you are not rushing the amendments and that is why you do not have the amendments here today, because it is such a big deal and we are going to spend a whole month preparing the amendments. Obviously he has one opinion and you have another.

**Mr Mills:** I am just talking from a personal perspective about that issue.

**Mrs Marland:** I know. It is the personal perspective that you are elected to be honest about, and I appreciate that is what you are doing in what you just said. But what I

am saying is anybody who thinks it is not important, especially in the kind of economy that we have today in Ontario, is out to lunch.

I say with respect that we cannot assume the general public all buy these newspapers. I would not be so presumptuous in Mississauga to even—it would be Alice in Wonderland for me to think that everybody in Mississauga reads the Mississauga News, although it is a good newspaper. To find out what the opinion is on Sunday shopping, if we really want to represent the people who elect us, then we have to go to those people directly and not ask them through a newspaper column. If Gord has done that, at least he has done something, but the fact remains that here we are with work to do and obviously all I can assume is that this was an important issue for this government.

My goodness, this government brought down few enough bills in its first eight months in the Legislature in any case, so if Sunday shopping was not a priority, why did it bother bringing in this bill in the first place? I would suggest to you that it was a priority for this government and it thought that maybe it could dance and doodle around with the mess that the Liberal government left and in so doing, it made it a priority.

Of the few bills of any significance this government brought to the House in the first year of being in office, it chose Sunday shopping. If it is not important, then why would it prioritize the order of business in the House to get it through, get it out for committee hearings, and now, whoopee, we sit for a month with no work done on it?

Suddenly it is not a priority, and as I said this morning, it is probably like automobile insurance: Maybe we are not going the right way. Then why do you not come out honestly, front and centre, and say: "I guess maybe we are not going the right way. We heard from the public and there are a lot of things in this bill that will not work. It is possibly unenforceable." I am not assuming it is, but possibly it is unenforceable, possibly you have heard people say that, so suddenly, would it not be great if you decided: "It is not really that we need a month to look at it. It is not really that we need a month to develop amendments. It is really that we are changing our position"? I would be quite accepting of that.

It is much better to admit that a position is changed. I think when the cabinet comes out and announces it is going to legislate the TTC back to work, that is probably going to be a red letter day in the Premier's office because he will have seen the light from a party position that a year ago he would probably never ever have possibly imagined in six Sundays in one month would ever happen. But the reality of government is that things do happen and things do change, and you are a much bigger giant in everybody's eyes if you say, "We were wrong about that. We have decided now that this is not the way to go, and we would like to look at protecting our workers in a realistic way because that is what we promised them when we ran for election," instead of another series of meaningless, broken promises, which this bill represents. It is a nothing bill, and you know that.

If it is so bad that it takes you a month to develop the amendments, does that not tell you what a great bill it is?



If it is such a good bill, it would not take you a month to write the amendments to it. I have never heard of spending a month to prepare amendments to a bill. Why do you not just scrap the whole thing and come back with something rewritten that does what you want it to do and what you promised the people of Ontario you would do on the subject of Sunday shopping? It may not be what I would do, but at least you take your own position about what the people of Ontario want and not something that you are going to spend a month preparing amendments to.

I am totally opposed to this deferral to September 30 because I would rather we got on with the business today and say, "This bill is not what we need," and accept the motion of my colleague, the critic for the Solicitor General, the member for Oakville South, Gary Carr. His motion makes a great deal of sense. You all have a copy of it, and you would end up then with a chance to start again and perhaps get it right this time.

**Mr Carr:** I will just add a couple of quick points. The problem the government is facing, as I see it, probably is twofold: One, how do we make changes to a bill that is so obviously flawed, and two—and I think more important—how do we now communicate our changed position?

I think it is unfortunate in this day and age that we spend more time, rather than getting the bill right, thinking how are we going to try and sell this message and communicate it so that we do not look like we have back-directed, to make it look like we have not broken our commitment.

It was interesting. Over lunch I was reading the speech from the throne. I must admit it was not an exciting lunch, but during the reading of it, during the speech from the throne, they said the government was going to listen to the opposition parties. It is interesting. We are coming up on just about a year since that throne speech was written. For those of you who do not remember—I looked at the date because I had trouble remembering—it was November, and very clearly, in a year's time, we have gone from listening to the opposition to trying to invoke closure because you do not want to take the political heat of what somebody might say about you.

As I was sitting there, I was reflecting on what I think government is and what leadership is all about. Leadership is action. Leadership is not position. It is not rhetoric that is left hollow. Leadership is action. So as one individual, I am looking forward to it.

As I mentioned before, I do not think any amendments can come in that will make this bill acceptable, but we will try and work with the government when it brings them forward, whenever that may be, to try to make the improvements that are necessary so that we have a bill that is workable. The commitment we have is that when you do bring them in, we will attempt to take a look at them and see what can be salvaged from this bill.

The only other point I would make is this: I appreciate the candour with which some of the people like our friend Mr Kormos came here today. There are some people who are prepared to stand up and say some things which might not be popular with the cabinet and the Premier of the day, but they are things that need to be said. I think we would all be well served if we listened to some of those comments.

Remember, as we go forward here, I will be looking forward to the amendments and what improvements can be done, and at that time we will attempt to make any changes we feel will be necessary. Good luck to you because I think you are going to have one difficult task.

**The Chair:** No further discussion? All in favour of Mr Morrow's motion?

**Mrs Marland:** A recorded vote, Mr Chairman.

**The Chair:** A request for a recorded vote: Mr Morrow's motion is that he moves adjournment of this committee until September 30.

**Mr Morrow:** That was defeated.

**The Chair:** The closure motion was defeated, or it was ruled out of order. I ruled it out of order. The motion before us is the motion to adjourn until September 30. Mrs Marland has requested a recorded vote.

The committee divided on Mr Morrow's motion, which was agreed to on the following vote:

#### Ayes—6

Cooper, Fletcher, Lessard, Mills, Morrow, O'Connor.

#### Nays—4

Carr, Marland, Poirier, Sorbara.

**The Chair:** Thank you. We are adjourned until September 30. However, the subcommittee should remain after our adjournment.

The committee adjourned at 1444.

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
Carr, Gary (Oakville South PC)  
Chiarelli, Robert (Ottawa West L)  
Fletcher, Derek (Guelph NDP)  
Gigantes, Evelyn (Ottawa Centre NDP)  
Harnick, Charles (Willowdale PC)  
Mathyssen, Irene (Middlesex NDP)  
Mills, Gordon (Durham East NDP)  
Poirier, Jean (Prescott and Russell L)  
Sorbara, Gregory S. (York Centre L)  
Winninger, David (London South NDP)

**Substitutions:**

Cooper, Mike (Kitchener-Wilmot NDP) for Ms Gigantes  
Lessard, Wayne (Windsor-Walkerville NDP) for Mrs Mathyssen  
Marland, Margaret (Mississauga South PC) for Mr Harnick  
O'Connor, Larry (Durham-York NDP) for Mr Winninger

**Also taking part:** Kormos, Peter (Welland-Thorold NDP)

**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service



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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 30 September 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 30 septembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 30 September 1991

The committee met at 1531 in room 228.

### ELECTION OF CHAIR

**The Vice-Chair:** Honourable members, it is my duty now to call upon you to elect a Chair.

**Mr Fletcher:** Mr Chair, it is my privilege to nominate Mr Mike Cooper as the Chair of this committee.

**The Vice-Chair:** Are there any further nominations?

**Mr Sorbara:** Can I just ask, as a point of information, sir, who the Premier decided should be the Chair of the committee? Who can speak to that?

**The Vice-Chair:** You do not have a point.

**Mr Sorbara:** I know it is not a point of order, it is a point of information.

**The Vice-Chair:** Any further nominations, please?

**Mr Sorbara:** I am just wondering in that regard, can we have about a half an hour of silence for Drummond White?

**The Vice-Chair:** Seeing no further nominations, I now declare nominations closed. Mike Cooper, will you stand?

**Mr Cooper:** I will.

**The Vice-Chair:** Thank you very much.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** Mr Morrow.

**Mr Morrow:** Thank you very much, Chair, and I want to congratulate you on that fine election; a job well done.

I have a motion that I would like to put forward right now, if you do not mind.

**The Chair:** Mr Morrow moves that the committee resume consideration of Bill 115, the Retail Business Establishments Statute Law Amendment Act, 1991, immediately.

Is there any discussion? Mr Sorbara?

**Mr Sorbara:** If you will bear with me for one moment, sir. I am just having a meeting with my caucus colleagues.

**The Chair:** While we are waiting, I would like to welcome Ms Carter and myself as new members of the committee.

**Mr Sorbara:** Thank you, Mr Chairman. I will begin simply by congratulating you on your accession to the chair of this committee. This committee has been perhaps one of the most difficult standing committees of the Legislature to sit on. I do not attribute that so much to the personalities that make up the committee as to the subject matter that the committee has had to deal with.

Having said that, I recall, sir, that you did preside over this committee for a week of the public hearings that we had on Bill 115, and my overall impression was that you were fair and reasonable in the way in which you conducted yourself and the committee proceedings. You allowed a degree of flexibility that ensured both that the witnesses before the committee had an opportunity to have their say, even when they were disagreeing rather aggressively with the government's position, and you also allowed, by and large, the opportunity for members of the committee, government members and opposition and third party members, to question individual witnesses.

That is not, as I said, a criticism of your predecessor, but we are glad to see that you are here. I am sure you can use the extra income that accrues to someone taking up your position, but I know for sure that you have not agreed to take on these hefty responsibilities simply because of the emolument that accrues to you for having taken the position. Having done that, sir, I welcome you as our permanent Chair and advise you that we have a great deal of work to do, not only on this bill. Unfortunately there is a very significant degree of work to do on this bill. It is not yet in the shape that we would like it to be.

I would like to welcome back those who join us regularly in the studio audience for the great Sunday shopping debate. There are faces that are familiar, faces that have been here with us for several weeks of public hearings before, and they are going to be with us for several weeks and months as we consider this bill clause by clause by clause.

I want to say a special welcome to a rather famous face in the audience. I see that the Solicitor General is here waiting to present his amendments. He would be well advised not only to review the amendments he is proposing to have moved before this committee, but to consider the amendments proposed by my colleagues in this party, the Liberal Party, the official opposition, and by the members of the third party, the Progressive Conservative Party, because I know they have amendments either to present or that have been presented and filed up to this point.

We are all gathered back here, those who oppose Sunday shopping and those who would like a more reasonable, more flexible approach to Sunday shopping, but as I look

around the committee room, I only see seven members, including yourself, Mr Chairman, who would stand up and unequivocally support the government's bill as it now stands, or as it shall be amended by virtue of the amendments that the government is proposing to put forward.

**Mr Fletcher:** Do you want some more people?

**Mr Sorbara:** While my friend the member for Guelph interrupts again and suggests that there could be more people—

**Ms Carter:** All those church groups.

**Mr Sorbara:** My friend the member for Peterborough says, "All those church groups." I guess she was not paying attention during the public hearings either. The church groups certainly oppose Sunday shopping, but at the same time, by and large, they opposed your bill, which if you look at it from one perspective, is simply the good old Liberal option, the local option, the municipal option, written on different-coloured paper. It is the local option because the municipalities can do whatever they want, so long as they can force their views into the so-called tourism exemption. That is going to be real fair, I tell you, Mr Chairman; it is going to be real fair. It is going to be fair for those drugstores which are regrettably operating stores that are a couple of square feet over 7,500 square feet. They are going to stay closed. Those good Christian drugstores that are small enough to comply with the bill as it stands now are going to be able to stay open.

There is a lot that is wrong with this bill, Mr Chairman, and unfortunately what we have heard from the new Solicitor General, taking on yet another task as a cabinet minister, is that the government simply was not listening to the people during a month of public hearings. But I do not want to talk about that yet.

1540

I want to talk about the motion that has been moved by my friend Mr Morrow that we return immediately to clause-by-clause consideration of this bill. There were a number of us, not only here in the committee but in the studio audience, who were prepared to undertake this work on September 16. That was the agenda, that is what the House agreed to and that is what this committee agreed to. There are members from our party who cancelled holidays and made arrangements with families so they could be here to attend and undertake the work they were charged with.

**Mrs Mathysen:** They had holidays? I did not have holidays.

**Mr Sorbara:** My friend from Middlesex says she did not have any holidays. If she did not have any holidays, it was not because she was doing what she should have been doing, and that is lobbying her government to bring some sense to this bill.

In any event, all of us came here on September 16 at 10 o'clock to proceed with clause-by-clause consideration of Bill 115. What did we hear? What did the government say? What did the government do? It did nothing except force poor Mr Morrow into moving probably the most embarrassing motion he will ever have to move on a committee such as this. Do you know why it was embarrassing? It

was embarrassing because the government was shutting the whole thing down indefinitely, that is, we did not adjourn to a specific date, it was an indefinite adjournment, adjourned sine die as they say. He had to do that without any assistance from the poor, beleaguered Solicitor General who was simply without enough courage to show his face in the committee and explain to the members of this committee, the studio audience—always with us on this debate—and most important, the general public, who I believed then and I believe now had a right to know the government's position.

I remind you, the government is free to take any position it wants. It could take the position that the bill had some significant flaws and needed significant amendment and repair prior to proceeding. It would have been appropriate for the Solicitor General to muster up his courage, come before the committee and ask for the indulgence of the committee to direct a few remarks to this committee; simply to state a position. He could have said, "The bill is in significant need of repair and we are still discussing it." He could have said: "The bill only needs minor tinkering but we are not ready to proceed. We do not have the amendments that we want to put forward prepared as of yet, but we will be back to you soon."

He could have allowed himself to be questioned on the bill. He could have allowed himself to answer some questions about his personal reflection on what the committee heard during a month of public hearings.

He could have come before this committee and simply told the truth, which is that at the time we were supposed to proceed with clause-by-clause consideration of Bill 115, there was a terrible little war going on in the government caucus and in cabinet, a little war over the question of Sunday shopping. You know what? It would not have surprised those of us who have sat in government caucuses. Anyone who was part of the Liberal caucus during the term of the last two parliaments will understand that these wars can break out in caucus. All the positions get represented in the caucus debate, including those who stand up, speak frankly and say: "For God's sake, why don't we get out of the business of trying to prevent people from buying toaster ovens on Sunday if they want to buy toaster ovens on Sunday? Why don't we just get off the backs of the storekeepers?"

I know, as sure as I know that today is September 30, that view was expressed by at least some government caucus members. In that war, there were others I am sure who stood up and said that—

Interjections.

**The Chair:** Order, please. Mr Sorbara has the floor.

**Mr Morrow:** Can he at least speak to the motion?

**Mr Fletcher:** He isn't. He is speaking to the bill.

**Mr Sorbara:** Just to respond to the interjections, I am not speaking to—

Interjections.

**The Chair:** Order, please.

**Mr Sorbara:** I am not speaking to the bill at all. I am speaking to the motion, I tell my friend, Mr Fletcher, which



is a motion to rush back now to clause-by-clause consideration when two weeks ago you were prepared to postpone it indefinitely, and that was the motion. This motion follows on because of that motion. I think that speaking to what happened during that period and the reasons we are in this predicament we are in today is entirely relevant.

I was discussing what one can only imagine was going in the New Democratic Party caucus. I guess you were there, sir, you heard all the debate. I guess you knew that pretty soon you would have to preside over a public debate about what was being said privately in caucus. I suspect that some people in that caucus debate were arguing for even more stringent controls on Sunday shopping. Peter Kormos, the member for Welland-Thorold, is still a member of your caucus. God knows he is still a member.

**Mr Poirier:** For the moment.

**Mr Sorbara:** For the moment, as my friend from Prescott and Russell says, although he is about the only one who has stood up for integrity on a number of issues on the part of the government caucus. I am sure that Peter Kormos stood up in your caucus and said, "We promised a provincially enforced common pause day and what we have given the people is simply the municipal option, the Liberal municipal option, the Liberal local autonomy, the Liberal local choice by another name, called the tourism exemption."

He would have argued against it. He would have argued, as he did before this committee on September 16 when he asked permission to speak—although he had been thrown off the committee presumably for wanting the government to keep true to what it said in opposition—that the bill should have been tightened up, tight tourism criteria, most stores closed. I suspect there were those in the caucus who would have represented almost verbatim the views of the United Food and Commercial Workers Union. I see that Pearl MacKay is with us, and she devoted hours and days and weeks to being part of our audience.

**Mr Poirier:** And president of your fan club.

**Mr Sorbara:** Well, my friend from Prescott and Russell says, "and president of your fan club." I think not. We had our moments during the course of public hearings but that is not unusual, that is expected. But to her credit, she was here, she kept a steady stream of notes, going to government caucus members, advising them of the position of the United Food and Commercial Workers Union. That is good. That is fair. That is entirely appropriate. She has a view. That view was repeated to us in city after city where members of the United Food and Commercial Workers Union in lockstep came before the committee and set out the position.

The position, if I recall—I have a copy here and I might read a brief during the course of the debate on this motion—was that most stores should be closed, most businesses should be closed, most undertakings should be closed on Sunday and most workers should not have to work. Remember, her position and the position of the union is that it is not only retail stores that should be closed but most businesses should be closed and most workers should not be working, and her position comes as

close to the position of Gerald Vanderzande as any two positions among the positions that we have heard in this committee throughout the course of public hearings.

I respect those views. I do not agree with them, but I respect them, and I can bet, without hesitation, that those views were represented in a little war that was going on in the NDP caucus and in the cabinet.

Do you know what else, Mr Chairman? I suspect that there were some arguments in the caucus for a greater degree of flexibility. I would say that would have been the reasonable argument. The argument would go something like this. I hear my friend from Middlesex or perhaps my friend from Peterborough standing up in the caucus and saying, "Look, we're in trouble on this, friends."

1550

**Mrs Mathysen:** You are having another fantasy, Greg.

**Mr Sorbara:** If I am having a fantasy—

**Mrs Mathysen:** Delusions of grandeur.

**Mr Sorbara:** No, they are not delusions of grandeur. They are just a little bit of anger that the government could not have exercised its responsibilities with a bit more integrity in this business. But in any event, the argument goes like this: The member for Guelph, say, Mr Fletcher, stands up and says: "You know what? I was there every day of the hearings and we are not winning the battle out there, friends. We're in trouble on this one. I see a sea change on this one. Most of the people want government to gradually recede from the business of regulating Sunday shopping."

**Mr Fletcher:** I will tell you what Mr Fletcher said in caucus, if you would like to hear.

**Mr Sorbara:** Mr Fletcher might have been saying in caucus, "Boy, some of those people actually make sense in their arguments." Mr Fletcher might have said in caucus something like this, "You know, the people from Dylex"—

**The Chair:** Order, please. Thank you for the speculation, Mr Sorbara, but to the motion.

**Mr Sorbara:** Yes, to the motion. I am trying to describe what I imagined was the debate in caucus that preceded the authorization of this motion. Remember, sir, that this motion does not arise from Mr Morrow, or even from this group of soldiers on this committee. This motion is authorized by Bob Rae, the priorities committee of cabinet and the Solicitor General. They gave the green light, "Okay, you can take it back now." Just like the motion that killed the bill for a while, it was authorized by the same band of anti-Sunday-shopping forces in the cabinet and in the caucus.

Anyway, there Mr Fletcher is arguing in caucus for a slightly more reasonable approach, an approach that says: "You know what? If we loosened up on this a little bit, if we allowed greater flexibility for businesses to stay open if they wanted, my goodness, we would get support from the people in the Beaches and from the shopkeepers in the Beaches. We would get support from municipalities all over the province, some of which are reeling under the effects of cross-border shopping."

Then someone else would stand up. Let's imagine that Ms Carter stood up. She did not spend much time with us—

**Mr Morrow:** Point of order, Mr Chairman: It is really nice that Mr Sorbara is speculating on what happens in an NDP caucus, but can we please return to the motion?

**Mr Daigeler:** I do not think that is a point of order, Mr Chairman.

**The Chair:** To the motion, Mr Sorbara.

**Mr Sorbara:** If I might help you out, sir, of this—

**Mr Chiarelli:** How is he off the motion, Mr Chairman? Are you a puppet for these guys or what?

**The Chair:** No. There is a little bit of speculation going on, and we are not talking about speculation; we are talking about a motion to resume debate.

**Mr Sorbara:** If you will just check with the clerk, sir, you will see that a motion to bring a matter back on to the order paper can give rise to the broadest kinds of debate. Historically, that has been the case. If you want authority for that, we can submit authorities to you, if you simply give us 24 hours' notice.

In any event, I will refrain from my speculation for a moment just to point out to you, sir, that on this motion there is going to be a great deal of debate. My friend from Prescott and Russell has some things to say about the motion. My friend from Ottawa West has some things to say about the motion. My friend from Nepean, as well, will want to speak to the motion. I think my friend from Oakville South, given his rather insightful question today in question period, is going to have something to say about the motion. I am going to be leaving the committee very shortly, so I am not going to be able to speak at length on the motion, but I hope to be able to return next week or the week after, as the debate on this motion continues, and to speak to it from time to time throughout the piece.

It may one day come about that we actually get to clause-by-clause. Maybe not. Who knows? Frankly, I would like to defer consideration of this bill and move right to the real business that we have at hand, and that is the business of hearing from a number of ministers on the advocacy bills and the natural death bills. I would love to do that, and if the government members wanted to put forth an amendment to move directly to that and put this matter aside for a while, that would be fine with me. Alternatively—

**Mr Fletcher:** You are all over the board.

**The Chair:** Mr Fletcher, Mr Sorbara has the floor.

**Mr Sorbara:** Alternatively, if the Solicitor General, who remains in the audience, simply wants to pick up his phone and give me a call and give the Progressive Conservative whip a call and suggest that he really wants to sit down and discuss the possibility of passing some substantive amendments, then we could get onto it more quickly as well. I point out to you, sir, that we have not heard from the Solicitor General as to what he thinks about the prospects of our motions or our amendments passing. Notwithstanding all of the nice words—

**Mr Fletcher:** These are bad.

**Mr Sorbara:** Mr Fletcher says my amendments are bad. If the Solicitor General, who is carrying this bill, wants to pick up the phone and say, "No way, José, to your amendments," that is fine. I can accept that as a position, but we would like to know. The trouble with this government—this government that has really arisen out of the trade union movement where the idea of negotiation and bargaining in good faith is such an integral part of what you say you believe in—in my experience of a year and a month on a committee such as this, I have not seen one real desire to really negotiate something.

I was talking about the Dylex amendment. I imagine that someone in the NDP caucus probably expressed support for the Dylex amendment. What is the Dylex amendment? It is a pretty simple amendment. In short, notwithstanding that all stores are to be closed except those that come within the tourism exemption, which can stay open, during the period from Thanksgiving to Christmas the Dylex amendment would allow any store that chose to stay open to stay open. That is a reasonable amendment. There you have a real winner on your hands. Why? Because the Christmas season is the time where for most retailers it is a make-it-or-break-it situation.

In Quebec, where they have more or less closed Sunday, they have the Dylex amendment. They still have a common pause day, at least as the New Democratic Party government would describe and define a common pause day, but they allow for the Dylex amendment. They allow storekeepers unfettered discretion to stay open during that period.

Let's hear from the Solicitor General as to whether or not he supports it. Let him pick up the phone. Let him stand up now and just say yes or no to the Dylex amendment. Let's hear some emotion. Let's hear some response. Let's hear some real debate. Instead, what does the Solicitor General do? He stands up in question period and says, "We'll discuss all these things in clause-by-clause later on this afternoon."

**Mr Fletcher:** That's right.

**Mr Sorbara:** Poppycock. There is no discussion that is going to go on.

**Mr Fletcher:** That is the way it is supposed to be done, in clause-by-clause.

Interjections.

**Mr Sorbara:** Well, there are a few interjections over there from the members of the government caucus. In any event, sir, I oppose this motion at this time. I do not favour, frankly, that we return to clause-by-clause consideration of Bill 115, and my reasons are simple. This committee heard a month of submissions from the public on all aspects of Bill 115. The amendments that the government is proposing to move to this bill clearly indicate to me that the government was not listening; the government did not attend those public hearings; the government was sound asleep during those public hearings.

The members of the government party moved their lips and nodded their heads and received notes from Pearl MacKay whenever she sent them, but they were sound asleep. They did not hear what the people were saying, so I



think we should just continue to adjourn public consideration of Bill 115 until such time as the government gives some indication that it wants in some way to respond to the democratic process that we undertook in considering this bill and the process that we put the public through in reviewing this bill through four weeks of public hearings. The government has not indicated that it will do that.

They embarrassed themselves, they embarrassed the committee, and they affronted the public two weeks ago when they refused to state any position. And now, to think that they could just come back with a press release Friday afternoon at 3:30. We all know what that is about. You do not want the press to cover it and you do not want anyone to know about it, so you put it out Friday afternoon at 3:30. We know that; we used to do that now and again.

1600

**Mr Poirier:** But not on a regular basis.

**Mr Sorbara:** But not on a regular basis. I say thank you to my friend the member for Prescott and Russell. In any event, we do not support this motion. We will want to debate it at length to try to convince the government members that it would be more opportune to proceed now directly to the advocacy bills, which was what we were supposed to do, by unanimous agreement, on the afternoon of September 16. These bills, which affect the frail, the disabled, the elderly and the infirm, ought to have priority now over this sham of a clause-by-clause consideration of Bill 115. So we are going to be voting against it, and we are going to be talking about it for quite some time.

**Mr Morrow:** I am not going to take a long time speaking, nor am I going to grandstand. I do want to say a few comments, though. I would like to take Mr Sorbara back to September 16, when he accused us of stonewalling and not getting these amendments through by Christmas so that the "poor merchants" on the street could deal with it. Now what is he saying? The complete opposite. Is it a normal flip-flop thing that is going on, or what is going on now?

We are sitting here with the Honourable Allan Pilkey, the Solicitor General, willing and ready to proceed now. So what is he telling us, that he does not want to proceed? My motion deals with the basic aspect of let's move, let's move on it now. We want to deal with it. We want to deal with it so the merchants in this province can have it in place and deal with it by Christmas.

Knowing that the honourable minister is extremely busy, can I have some consent that he can leave now? Obviously we probably will not be dealing with him today. Is that okay?

**The Chair:** Is there unanimous consent?

**Mr Daigeler:** It is not up to us to determine the schedule of the minister.

**Mr Morrow:** Is he going to be speaking today or not?

**Mr Fletcher:** Are you going to allow him to speak?

**The Chair:** It is up to the minister.

**Mr Chiarelli:** Is he here just to speak or is he also here to listen? If he is here to listen, then he can stay.

**Mr Morrow:** We just heard from Mr Sorbara that we would be dealing with my motion probably today and probably for a long time. Obviously that has nothing to do with clause-by-clause consideration.

**The Chair:** Thank you, Mr Morrow. It is up to the minister whether he chooses to stay or leave at this moment. Continuing, Mr Morrow?

**Mr Morrow:** That is it.

**Mr Carr:** I will not be too long on the motion. Coming back to the Sunday shopping bill, I wish, as my friend Mr Morrow said, the realization that they wanted to get it dealt with was the real reason. I suspect, though, that one of the reasons is what happened last time when they chose not to proceed with it. The perception that the public has of this government, which I think is very clear—I am trying to be as kind as I can—is they do not know what the heck they are doing and they are flip-flopping from crisis to crisis to issue to issue. They want to tackle it; they do not want to tackle it. They might have the amendments ready; they are not ready. It goes before cabinet; cabinet says, "Wait a minute, we don't want to deal with that now."

My goodness, I am at the front here and I get a chance to see it every day. Whoever is quarterbacking this thing going through there—the poor whip earns every bit of her pay trying to keep track of this government and its crew. It makes it very difficult for opposition parties. I have amendments that our friends in legislative research worked probably all weekend on, and I want to thank them for putting this together.

But as an opposition party, when you look at a piece of legislation like this, you say, okay, what would I do in an ideal situation if I were Solicitor General for a day? I think it is very clear that having absolutely no regulations would be better than what we have here. When I speak to the people in my region, a lot of them municipal officials, as we all do, I say: "What's the big issue out there? What are you hearing on Sunday shopping? Are people lined up to come in to Peel because they want to be open?"

In Halton region the municipal people are saying, "We get very few calls about it, if any." That is from the couple of councillors I spoke to. It is not a big issue in Halton. In fact, if they were to say, "Tomorrow you can open up in Halton," there would be probably a significant portion of the population that would say, "No, we're not going to open," although I think we have a little area in Bronte that does open right now.

When you talk to the municipal politicians, they say it is not a big issue. They are not banging down the doors in my area. Having heard that, I guess I would take a look at the amendments in this bill. Then you say: "Here is what the government has come in with. What can we do to make it better?" I had our friends at legislative research put together something based on what this government intends to do. You look at the amendments they are proposing to bring through and you listen to hearings all summer. You have a very clear idea, and I will be very clear.

What I would do if I were Solicitor General of the day is take this bill, throw it in the garbage can and not proceed with it at all and say: "The circumstances have changed,

for whatever reason. We made a mistake on this. There are a lot of different views. Let's get on to more important issues."

To tell you how crazy it is in this province, over the last year or so we are looking at an increase in crime of about 37%, and for whatever reason we are going to have the Solicitor General—the "top cop" I guess is what they call him affectionately—who is going to be spending all afternoon dealing with something that probably we will not get to. Meanwhile you look out in my area where we have been touched by a couple of tragedies this summer with the deaths of two young girls. We had over 4,000 people out to the Take Back The Night protest. To get 4,000 people out—

**Mr Winninger:** That's relevant to Sunday shopping?

**Mr Carr:** I will show you where the relevance is. The relevance is that here is a standing committee of the Legislature; you get 4,000 people who are worried about what is happening out there, and what are we dealing with? We are dealing with Sunday shopping. I can tell you, if you asked every one of those 4,000 people—

Interjections.

**The Chair:** Order. Mr Carr has the floor.

**Mr Carr:** If you had asked those 4,000 people, "What should a committee of the Legislature be dealing with?" I tell you very clearly, it would not be Sunday shopping. Out of the 4,000 people, you would be lucky to find one who said that.

**Mr Daigeler:** On a point of order, Mr Chairman: I know the government members were not listening during the summer to what the public was saying, but if they would now at least listen to what the opposition is trying to say while they have the floor, that would be appreciated. I think it is part of our parliamentary system that one of the most important responsibilities and privileges the opposition has is to make its views known, especially at these meetings.

**The Chair:** Thank you, Mr Daigeler.

**Mr Carr:** If the government was listening to the public, it would know very clearly that when it comes to what they expect from the standing committee on administration of justice, to have us looking at Sunday shopping—then we are not, then we are, and then we are not—if you looked at it as a business person coming from the outside and you said, "This is the way government operates," people would throw up their hands. It is so ridiculous, literally, that people can do nothing but laugh at the situation. Then we wonder why people look at this government and say they do not know what the heck they are doing.

For whatever reason, they brought this bill in to try to please both sides. It pleased nobody. With all due respect to David, he did not hear what was being said out there, but both sides of it, everybody from the United Food and Commercial Workers Union all the way through to the municipalities, said that this is a dumb bill, it is crazy and they do not know why the government is proceeding with it.

I thought I had seen all the craziness. I will get a chance to speak a little bit more at length when we get out

to the government motion, because I thought I had seen it all until Friday afternoon, when I had a chance to look at a couple of the proposals on the government amendments.

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So now we are bringing it back on. We have a Solicitor General who now feels it is a priority. When we had this discussion before, they did not want to proceed. I think my friend Mr Sorbara is correct. If they had said at the time: "I'm sorry. We've got a lot of debate. We heard a lot of things that were out there and we really can't decide what needs to be done so we are going to take a little bit of time to reflect on it." Instead, they try to rush through with a couple of amendments which I think, as strange as it may seem, are going to make it even more ridiculous if any of them come through. I am not even sure if they are going to proceed with them now. I suspect they probably are but, knowing the changes that happen from a Friday afternoon to a Monday morning, I personally do not know what to expect of this government at any moment and at any given period of time.

I do not want to carry on too long on the point, other than to say that what the public is perceiving of this government gets reinforced every time you take action as you have done on this particular bill. It was a bad bill when it started out. You had members who went around the province, and I think, with all due respect, a couple of them who voiced opposition to it and said that, yeah, there were a few major flaws in it that they saw, and they spoke out. Most of them attempted, through questioning and otherwise, to convince the people coming before them that it was a good bill, when in fact the vast majority of the people, from the tons of paper and submissions that we had, said it was a poorly designed and badly flawed bill. I might add again, those were people on both sides of the issue.

As we go forward here and take a look at some of the government motions, I would like to say very clearly that this government has without a doubt reinforced what the public is saying. They do not know what is happening. I do not know how much of it we can put down to a change in solicitors general. I know the last Solicitor General, who originally had the responsibility for running with this ball, is probably the guy we should fault for this original one. As often happens in government, the next Solicitor General comes along and the ball is handed off to him, and you are already about 15 yards behind. It makes it very difficult to come back and try to prove something. Although having said that, I suppose he was in on the committee or on the cabinet decision when this terrible bill was brought forward and, as a municipal politician previously, should have been one who knew better than anybody else exactly what they were doing with this particular piece of legislation.

I understand a couple of the members behind me would like to speak on this, so I will leave it at that, other than the fact that this just reinforces what the people are saying about this government: "They don't know what the heck they are doing."

**Mr Chiarelli:** Mr Chairman, I, too, would like to congratulate you on your election as chairman of the committee.



I am sure there will be exciting times over the next few months. I will be moving an amendment to Mr Morrow's motion, but before I do so, I want to say that I do not question the motives, the bona fides and the intentions of the Solicitor General or the government in trying to be decisive, in trying to come to grips with a very difficult issue. I think everyone will agree that the government side has probably come to the conclusion that it is a very difficult area to legislate, full of pitfalls and traps.

The amendment I am going to move is given so that we will not be getting into something that will cause us more difficulty as a province, and you as a government, later on. In that context, I want to move an amendment to Mr Morrow's motion by adding, "after January 1, 1992, in order to permit before that date further public hearings including the attendance as committee witnesses of the chairman of the Ontario Municipal Board and the deputy minister and minister for the Ministry of the Attorney General."

I indicated to the clerk that I would be moving that amendment, and I have provided a copy to her. I believe it is in order. I would like to talk about that particular amendment at some length. I know that "at some length" will give some people on the government side some concern, because, as I indicated, I can understand how and why you want to be decisive on this particular issue.

But by way of introduction and to show you what my thinking is—and I believe my thinking represents a significant group of people. Whether it is a majority or a minority is irrelevant. I think the thoughts and the ideas have to be expressed and they have to be vetted in this committee. I would hope the government members would be patient and would give due consideration, although not necessarily agreement, because I do not think they will agree with it, but I think there may be some food for thought. I want to refer initially to the Solicitor General's press release of Friday, September 27, when he indicated, as Mr Sorbara said, late on Friday afternoon that amendments would be forthcoming and that they wanted to proceed with them with dispatch. I think the word is "immediately." I will refer to a few quotes from that and make a few comments by way of introduction.

The press release says basically: "We are making good on our long-standing commitment to provide common pause day legislation that protects the rights of retail workers and recognizes the unique requirement of the tourism industry." The previous Solicitor General made the same statement. This Solicitor General is making it again. The statements and the presentations of the previous Solicitor General were, I think, taken by the government side as being substantive and correct. The statement that is being made now by the Solicitor General, or that was made through his press release, I think is to be taken to mean that you finally have it right.

I am suggesting to you that, without some debate and discussion, perhaps you do not have it right, and we will be going into some of that detail as to why perhaps at this point you may not have it right. I also want to ask the question, after all these public hearings and many public submissions from honest, decent, well-meaning people, whether in fact these changes are reflective of the submis-

sions that have been made over the course of the summer by the people of Ontario. I think we have to look at that particular issue, and unless and until we look at it, I do not think we are being fair with the people of Ontario if we are not responsive to their submissions.

Another comment that was made in the Solicitor General's press release of Friday was: "...an appeals mechanism through which tourism exemption bylaws could be challenged. This would be administered by the Ontario Municipal Board, which will be obliged to make its best efforts to conclude the appeal process within 90 days." At the present time, the Ontario Municipal Board has a 13-month backlog. Was the OMB consulted as to whether or not bureaucratically it could handle what certainly will be a significant influx of cases? Does it have sufficient budget? What budget implications are there for the Ministry of the Attorney General and the OMB?

I think we tried to get some answers to that through Mr Carr in the Legislature today, and of course we were told, "The committee is the place to discuss it." Well, we will be discussing it here, and we hope we will get proper answers here to that particular question.

We do know that the OMB is working on a policy of fast-tracking applications that deal with affordable housing. They are now told that they will be fast-tracking applications dealing with Sunday shopping. Is it realistic; is it practicable for the OMB to do that, and how much money will it cost? We do not have answers to that. I would hazard a guess that the Solicitor General does not have an answer to that and I would suggest that, unless and until he does, the Ministry of the Solicitor General is being irresponsible.

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The press release also states, "Mr Pilkey also stated that, at the request of chambers of commerce, there would be no reference to them in the final text of the regulation under the bill which sets out the exemption criteria." I can understand that the chambers of commerce are not happy to participate in the process. They did not volunteer to do it, they did not see that as their mandate and they simply want to opt out of it.

My question to the Solicitor General and to the members of this committee is, was the OMB asked? Are they willing? What does Mr Kruger say? Does he have the resources to do it? I will give some evidence from Mr Kruger, who attended a committee of this Legislature about eight or nine months ago. I would suggest, from the comments he made at that time, which are on record to a different committee in this building, that he is not the least bit anxious or willing, nor, the record shows, does he have the money to do so.

The press release goes on to say: "'Effective common pause day legislation is a priority for our government,' said Mr Pilkey. 'I am proud to see our efforts, the work of the standing committee and the participation of so many Ontarians achieve such admirable results. Public consultation has played a vital part in the development of Bill 115 and our partnership with the people of Ontario.'"

Again, we heard Mr Carr saying quite clearly in the Legislature—and he attended many of the hearings—that

the people who support a common pause day did not like this legislation and the people who supported open Sundays did not like this legislation. Mr Sorbara, several days ago, when the motion was originally made to defer this clause-by-clause indefinitely, pointed out that our researcher for this committee, Susan Swift, has done an analysis, and the summary of submissions indicates that by and large people rejected the government's bill.

To relate it to my motion that perhaps additional public hearings might be necessary, I think that if in fact the amendments which are proposed do not address the strong objections of the majority of people who came before this committee, then perhaps some people should have an opportunity to reappear.

What has been the initial public reaction, and why do I think we need some new public hearings, maybe limited, but why do we need some public hearings? If we look at the September 29 Toronto Sun, the headline is: "Furore at NDP Sunday Law Changes." I am just going to quote it for the record:

"Metro merchants are furious with proposed NDP amendments to Ontario's Sunday shopping laws. If the suggested legislation is passed, the minimum fine for staying open on Sunday will be raised to \$5,000. And the NDP wants to give residents the power to overturn tourist area exemptions.

"If that's the case, I'll see to it that all of Chinatown gets closed when their status comes up for renewal," said Spadina Avenue furrier Paul Magder, who has faced 700 Sunday opening-related charges. 'I'll make sure Chinatown stays shut until I am allowed to open on Sundays.'

"Magder says his shop was around long before the Chinese merchants were in place. But an injunction means he can't claim the same exemption they can. 'Listen to how happy the Buffalo shop owners will be with these changes,' he said. 'The Conservatives made a bad law, the Liberals made it worse, but the NDP are the ultimate.'

"Martin Herzog, owner of Tunes record shop, who has more than \$10,000 in fines outstanding, says the higher penalties won't make a difference to him. 'No matter how high the bill gets, I have no intention of paying. When I read that one person could overturn (an exemption from Sunday shopping) for an entire community, I thought, that can't be right.'"

The Solicitor General says he is helping the tourism industry. If we refer to a Toronto Star article, and I am quoting what the Solicitor General told the Toronto Star, "We are making good on our long-standing commitment to provide common pause day legislation that protects the rights of retail workers and recognizes the unique requirements of the tourism industry," Pilkey said in a news release."

What is it going to do for the tourism industry? If one person in a community 50 miles, 100 miles away or at the other end of the province files an objection in the municipality to a particular tourism bylaw, what will that mean to the tourism operators, the overwhelming majority of whom are small business people, many mom-and-pop operations, who depend on this—small business people trying hard to making a living and contribute to the economy and contribute to their community? They will need

lawyers. They will need to wait at minimum 13 months before the OMB with the backlog—and it will probably be significantly longer than that. So what does it do for the tourism industry? If anything, it makes it worse. I think we should look at that and we should be asking some tourism operators about the effect of these particular amendments on their businesses and on the application process.

I mentioned earlier some contributions John Kruger made to the standing committee on government agencies. He, of course, is the chairman of the OMB. He appeared before the standing committee on government agencies on Tuesday, January 22, 1991. He was there with Anna Fraser, who is a member of the board, and also with the vice-chairman of the board. There is quite an extensive amount of evidence which Mr Kruger gave to that particular committee dealing with the OMB, but there are some very significant comments he made with respect to the backlogs and the process that is confronting the board at this time and which no doubt will be very significantly exacerbated by reason of the proposed amendments of the Solicitor General.

I am going to quote from what John Kruger said to that committee about eight or nine months ago, and I would ask the committee members to be patient, because I am going to go through his evidence with some deliberation and in some detail to indicate that it probably would be advisable, under the circumstances of the proposed amendments, that Mr Kruger attend here as a witness, in view of the fact that he is going to be carrying a very big load if these amendments are passed.

Quoting page A-61 from Tuesday 22 January Hansard from the standing committee on government agencies, this is Mr Kruger speaking:

"When I became the chairman of the board, the first thing that we called for was a consultant's report. We saw that there were difficulties. This was recognized by the board and that produced this report. It was done by an outside consulting firm, the Coopers and Lybrand group, and it took a look at every single thing the board did.

"There were some criticisms of that. They said: 'Some of the methods and procedures you've got, you've got a terrible backlog. You've got to change some of your procedures and the way of the past. You have to change some of these things.' They also highlighted that the backlog was not going to go away and in fact it was going to get worse.

"It takes 18 months to train a member of the board. They have to be trained and they have to understand rules of practice and procedure and so forth. Being a lawyer is of some help, but if you do not have skilled municipal experience, it is not much of a help. So it takes 18 months to get them on stream, and within the next two years we are going to have six members retire. One member retired on 31 December—that is 1990—and has not been replaced. I have another member who will retire in June whose time is up. I have another member who retires in September of this year. I have another member who will probably retire in June because the 90-and-out has the pensions. I have a member who will retire early in 1992 and I have one other member who is ill and we are not too sure



if that member is not wanting to retire towards the end of this year.

"We have suggested to the government that we want to increase our complement of 30 so that we can get these people trained and then within two years we will be back to 30. We are going to lose, on average, 16 years' experience in these members, which is quite a blow to the board. In total, if I add up the experience that they have had in adjudicative work, it is some 97 years, so we are very concerned about that as we go forward. That has caused a backlog, not just the members alone but the weight of the pressures that are upon the board."

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He is saying that the OMB is already under tremendous pressure. They have already been told they have to fast-track affordable housing applications. Now they are being told, the minister has indicated, that they have to fast-track, within 90 days, all applications dealing with Sunday shopping.

I am going on to read additional quotes from Mr Kruger. "Some of these figures might not have turned up in your review. On average, we receive some 6,000 requests for appeals in a given year." Has the Solicitor General or anybody on the government side made any assessment or prediction of the number of appeals that will be generated as a result of the proposed amendments? It is a serious question, and if there is no realistic answer to that question, the government will have serious problems. They will give serious problems in a chain reaction to all the other matters that are presently backlogged before the OMB.

I am quoting again from Mr Kruger: "I took some figures off as of 31 December to give you an idea. There seems to be some thought out there that in a time of recession the board's workload goes down. The board's workload is stabilizing and is not going down." Then he goes on to say, later on: "The backlog presently exists. It takes 13 months to get a hearing before the board and that is increasing. In this time, what has happened, although the numbers of appeals have stabilized, is that the appeals are getting longer. There is hardly an appeal where the environment does not now enter into it. We are hearing that even on consents. For example, we have in the system at the moment 1,713 assessment appeals. That involves some 37,000 complaints. So the workload on the board is enormous and we have to find better ways of handling this internally and administratively. We have to look at things like alternative dispute resolution, we have to look at things like mediation and all of these methods, rather than just put on more members. That is what we are going to attempt to do."

I want to refer to the issue of alternative dispute resolution. Mr Kruger refers to it in the context of the backlog of appeals presently before the board and he talks about a 13-month backlog. In this government the left hand does not know what the right hand is doing. I am trying to indicate that it would appear as though the Solicitor General is coming forward with these amendments without costing the additional OMB expenses and without costing the court expenses for additional court hearings which would be permitted. It has not in any sense looked at the

whole issue of alternative dispute resolution as a method for expediting matters which are before the OMB. As Mr Kruger says, we must look at mediation and alternative forms of dispute resolution.

The Ministry of the Attorney General is sitting on a report of this very committee. The standing committee on administration of justice, reporting in June 1990, made recommendations for alternative dispute resolution, a very comprehensive report. Recommendation 3 indicates: "The committee recommends that the government review present and future legislation and that it build in ADR procedures where they would lead to a less costly and more expeditious resolution of disputes that could arise under the statute. The committee further recommends that ADR techniques be put at the disposal of agencies, boards and commissions in the ways proposed by the Macaulay report."

To summarize what Mr Kruger is saying, there is a 13-month delay and they cannot stay on top of the number of appeals they have. And we are going to dump all of these Sunday shopping appeals in their lap. He is saying, "Let's look at an alternative dispute resolution means of dealing with it."

This committee's own recommendation from a year ago is saying, "Let's speed up procedures by using new legislation to aid alternative dispute resolution." I see the Ministry of the Solicitor General trying to do a quick fix on the politics of this particular issue by saying, "We'll answer somebody's concerns by giving him a right of appeal," but it has done no legitimate study or assessment as to what that means in the system and what it will cost. Nor has it even looked at modern 1990 ways of dealing with this type of dispute.

It has a golden opportunity here where it is creating a lot of disputes, where it has a massive involvement by the public, all these groups which are interested in Sunday shopping. They are being told, "Go to court or go to the OMB," which is as good as going to court. The chairman of the OMB said nine months ago: "This is the wrong way to go. Use alternative dispute resolution, use new ways to resolve these problems in communities and for groups which have an interest in issues."

I give the Ministry of the Attorney General and the Solicitor General failing grades for trying to use a quick fix and not looking at modern ways of solving this problem. Even given acceptability of the principle of this government, of what it is trying to do with this legislation, it is going at it in a terrible way, it is doing it in an old-fashioned way, it is doing it using techniques that were valid in the 1950s and the 1960s. It has not even assessed a proper process for resolving these. "Ah, the OMB is there. We'll dump them on to the OMB." What is the chairman of the OMB doing and saying? He is saying, "We can't handle it." By moving my amendment to this motion, I am saying: "Let's get the chairman of the OMB here. He's on the hot seat. Let him come in and say, 'Yes, we can handle it,' or 'No, we can't,' or 'Yes, we can handle it if you give us the money.'" Put a pricetag on it.

We have the Treasurer standing up in the House in a couple of days. He is going to be telling the people of Ontario what drastic cuts and sacrifices they are going to



have to make because of the crunch of the recession, and at the same time he is saying to the courts and the Ministry of the Attorney General and the OMB: "We're going to dump costs on you. We don't even know what the costs are. Come and see us next year. Maybe we'll have 5,000 appeals."

Maybe there are special interest groups—I think you can guess which they are—that will put appeals in on virtually every application to open up Sunday shopping for tourism exemption. You are going to have every application for tourism exemption that will be going before the OMB. I am asking you on behalf of the people of Ontario, on behalf of my constituents, who are taxpayers, do you have a pricetag? I am saying to the Solicitor General and the Ministry of the Solicitor General: Until you put a pricetag on it, I will argue and debate this legislation until the cows come home, because you are giving us bad, bad government. You are trying to do a quick political fix, and it is unacceptable in this day and age.

You have to look at serious ways of accommodating your concerns without totally exacerbating the process and without pitting one part of the community against the other part of the community. You will be inviting people to go to court and inviting them to go to the OMB, when this committee itself is recommending a friendlier, better way to deal with this type of dispute—alternative dispute resolution, mediation. Work it out with common sense, where you are not breaking everybody's pocketbooks and you are not pitting one group in the community against other parts of the community. I think the whole rationale behind these amendments is terrible. It is ill thought out and it is intended to be a quick fix.

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I want to refer again to some additional quotes of the chairman of the OMB. This is, as I mentioned before, the standing committee on government agencies. "The board has an enormous workload in front of it, very controversial, and I will just go through some of them." He lists some of the very difficult and complicated types of cases to indicate why the backlog has been developing.

He goes on to say, "The board has in front of it—all this was outlined in the consultant's report, which said, 'It's not going to get any better, so you have to get your members on, you have to get them trained and you have to improve some of the ways you do business.'" What has the government done to give the OMB any assistance? You are dumping 1,000, 2,000, 3,000—do you know how many cases you are dumping on the OMB? If you do not know that, how can you possibly bring forward this legislation without further hearings and without further evidence? It is impossible. Of course they have no idea. It has been totally, absolutely, inconceivably irresponsible.

Mr Kruger goes on: "The state of the board is that we are making our best efforts. Our members are working very hard. Their productivity per member is increasing, but it is just the reality. Our hearings are getting longer and longer in numbers of days. What a lot of people do not realize is that anything that touches land use gets into socioeconomic questions, for instance, when Mr Farnan, the minister, announced he was going to have group homes

rather than incarcerate people. Fine idea; nothing wrong with it. I shuddered, because every group home hearing—you can imagine what it is like in a community. If it is 12 days of hearings, it is two days of evidence and 10 days of emotion. One of the members sitting here can tell you all about that in Sault Ste Marie, where we have just been through that."

If he is saying that about group homes, what will he say about Sunday shopping with the religious connotations, the labour connotations, the small business connotations, the viability of community connotations? He is saying here that on a group home issue, "If it is 12 days of hearings, it is two days of evidence and 10 days of emotion." What are you dumping on to the people of Ontario by dumping Sunday shopping, every single case, on to the OMB or into the courts without even considering modern-day alternative dispute resolution, which this committee has unanimously recommended and all parties have recommended? This government is leading the province in the wrong direction, the totally wrong direction.

Just by way of additional comment, this was a question by one of the committee members. Mr McGuinty: "Mr Kruger, do I take it from what you said this morning it is a fair assessment that the backlog that exists right now is unacceptable?"

Mr Kruger: "That is quite correct. The standard within the board that we would like to achieve, and we did achieve it back in about 1985, when we had 36 members, is approximately 90 days." They are now at 13 months.

One of the other members of the OMB, Ms Fraser, answering a question from Mr McGuinty, said the following—I think this is very, very critical to my amendment which requests additional evidence and additional study with respect to the OMB:

"Mr McGuinty, there are some points that I would like to draw to your attention. I know when I joined the board and was considering the matter of the backlog and I started thinking about it, my own analysis was that in the circumstances it would have been more surprising if there were not a backlog than if there were, for a number of reasons. This is the analysis that I have come up with, and I have to emphasize this is a personal one. There are an increased number of acts"—that is, statutes—"that the Ontario Municipal Board is responsible for and that can generate appeals to the board. If you look at the number of acts over the years that we are responsible for, and you can see them outlined in each annual OMB report, you will see the numbers growing. I think it is 121 acts now."

So over the years, governments have been dumping more and more on to the OMB. Now you are dumping Sunday shopping on to the OMB and you have not presented any research to show that this is a practical and reasonable thing to do.

I think you have come to the conclusion, and you might be quite correct, that a certain number of people in Ontario society should have a crack at these bylaws and this legislation in communities across the province. They should have their say in a forum that can be adjudicated. But by jumping in cold turkey, without any research, dumping it on to the OMB, you are making a very serious



problem for this province, for the Treasurer, for the people who are going to be in an adversarial system, where they ought not to be. I will say once again that you had the opportunity and you still have the opportunity to create the recommendation of the justice committee to work in an appropriate forum of alternative dispute resolution.

That recommendation of this committee of May or June last year flows out of a very comprehensive study of boards, agencies and commissions called the Macaulay report, *Directions: Review of Ontario's Regulatory Agencies—Overview*. You have the best research you possibly could have in the Macaulay report and the ADR report, which was reported to the Legislature last year, to look at a reasonable, friendly way for groups to deal with Sunday shopping, and without considering it at this time, I believe this committee and the government are blowing it.

I will have more to say on this particular point later, probably after this motion is defeated and we deal with the main motion again, but I want to make a couple of additional comments in conclusion. I was approached in my constituency office a number of months ago by a small, sole-proprietor contractor who purchased a small property and required a minor variance through the committee of adjustment in the Ottawa area. He was quite concerned because there was what appeared to be a frivolous objection filed by a home owner. An appeal was filed to the OMB. I guess it is Mr Daigeler's constituent; he wrote to a few of us.

But the contractor was very active in dealing with Mr Kruger at the OMB and he really questioned the backlog that existed at the OMB. Mr Kruger, the good and responsive bureaucrat that he is, personally dealt with this particular issue, even on this small matter. He wrote to Mr Ledgerwood, who is an Ontario land economist and quite experienced in planning matters. I just want to quote one of the things that Kruger said to him in his letter of February 12, 1991: "At the present time the appeal process is experiencing delays, not so much because of the process itself, but because of the current case backlog that the board is faced with and is addressing. Without the backlog, the board could schedule hearings in a much shorter period of time, which would resolve, to a large extent, the type of problems you describe."

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I am asking a very simple question of the Ministry of the Solicitor General and the Ministry of the Attorney General: What will the amendments do to the backlog at the OMB? There is a very easy answer. The answer is, "If it's going to increase the workload, we'll expand the number of members and we will expand the bureaucracy and we will have a separate set of people dealing with Sunday shopping issues that come before the OMB." But I am asking the Ministry of the Attorney General to tell the people of Ontario what that will cost.

The cost might be worth it, to give people a say, to give people a court of last resort to make their point on Sunday shopping. It might be a reasonable cost to have on behalf of these people who want these appeals across the province. But I am saying to you on the government side and I am saying to the members of this committee, if you cannot

present this committee with a cost or a projection of the number of appeals that will go to the OMB, you are being irresponsible to the people of Ontario. You will pay the price in this committee, you will pay the price in the Legislature, and you will pay the price by the vast majority of people who are going to be burdened by the OMB being backlogged.

The complaints are coming forward at the present time from people who are appealing minor variances, making assessment appeals, from the people who want to get affordable housing on stream, who want to fast-track affordable housing. How can you fast-track affordable housing when you are going to fast-track Sunday shopping appeals in a 90-day period? It is a simple question. It cries for an answer. I do not think you have an answer to that particular question.

I know that Peter North has been a strong advocate of opening up Sunday shopping for the tourism industry. I want to know how Peter North is going to answer his caucus colleagues and cabinet colleagues when he is inundated by these tourism operators, saying: "Thank you very much for giving me an exemption. The starting point is a 13-month delay, and then after that we have an appeal. Thank you very much. Peter, incidentally, are you going to give us grants to cover our costs to hire lawyers, to promote our tourism exemption before the Ontario Municipal Board? Hey, forget about the OMB. I might even be able to go to the OMB without a lawyer. But my God, I am a tourism operator from Prescott and Russell and I've got some guy from Niagara Falls who is taking me to court. He's got a right to take me to court. Peter, look, I've got a bed and breakfast. My gross is only \$50,000 a year. Will you give me a \$5,000 grant to fight this in court to promote my case?"

What in hell are you guys doing? It is insanity. If you want to give people a court to discuss the Sunday shopping issue, give them something that is practical. Give them an alternative dispute process; give them something that makes sense. You guys are heading for folly, and do you know what is going to happen? The people of Ontario are going to find out how irresponsible and how foolish you are being by introducing amendments that are bureaucratically, politically insane. You are going to be pitting every section of the community against it: the people who advocate a common pause day, the church groups going before the OMB, every single matter of Sunday shopping before every municipality, arguing against the tourism people. What kind of community are you going to develop?

The reason I am moving this amendment is so that we can open it up and have Kruger come in, we can have the Attorney General's office come in and they can answer the questions. They can allay our fears. If they can say, "Member for Ottawa West, there is no problem; we can handle these at the Ontario Municipal Board," fine, it is the way to deal with the issue. But if they come in and say they cannot handle it or it is going to cost \$5 million a year, maybe that \$5 million should be spent setting up a proper system of alternative dispute resolution so that our people and our groups, who are all well-meaning in our communities, can deal with this issue in a system that is not adversarial.

You are dumping our well-meaning special interest groups into an adversarial system, where they will be fighting ad nauseam. It is irresponsible of the government to do that.

Mr Chairman, I thank you for giving me this time. I thank the committee members for permitting me to debate this particular amendment without interruption. It is an exceptional thing for them to do, I might add. I would encourage debate. I would encourage the members of the committee and the Ministry of the Attorney General and the Ministry of the Solicitor General to take my comments seriously. I think there are serious problems and I would encourage members of this committee to debate my motion to amend very fully.

**The Chair:** Thank you, Mr Chiarelli. Mr Daigeler, on the amendment.

**Mr Daigeler:** Thank you very much for giving me the floor. I will not be quite as temperamental as my colleague here, the member for Ottawa West. He has that special flair. I guess he trained in other parts of the world and obviously in the court system as well. I will try to be cool and collected, but nevertheless I can certainly understand why Mr Chiarelli would feel the way he does. This is a very serious matter that is before us.

Knowing the financial situation of the province and knowing the concerns my constituents have—and, I am sure, your own, Mr Chairman—in terms of the taxes we are raising and that we have to raise, I think any government action that will put forward what may well be very unnecessary regulations has to be looked at extremely carefully. So I can certainly see why my colleague speaks very forcefully and very convincingly about this matter.

Let me start, first of all, with regard to my own comments. I too wish to congratulate you. I understand you have been chosen, to use a somewhat neutral term, to chair this committee. I had the pleasure of being a substitute member over the summer when the hearings were on, and the few sessions you chaired went on with peace and a lot less acrimony than we had before, although I must say I think the regular chairperson perhaps learned from your own chairing and perhaps from some of the comments that were made by the opposition members. I think the rest of the hearings went on a lot more smoothly than the beginning seemed to indicate. So congratulations, Mr Chairman. I am sure you are going to do well.

Even though I was just a substitute over the summer, I tremendously enjoyed travelling the province and hearing from the different people and I certainly would have liked to come to the amendments' discussion. In fact, I was sitting in the plane about two weeks ago when this committee was scheduled to look at the amendments. I certainly had reserved a whole week to be here in Toronto to listen to what the government had taken from the hearing process, what the other opposition party had taken from the hearing process and also, of course, to put forward amendments from our own party.

So I went to the airport. I got up at 5:30 in the morning and went to the airport, trying to fly out at 7 o'clock. Of course what happened was that we were in the middle of a federal public service strike and I was sitting in the airport

and I was not able to fly out because they would not let me into Toronto. As it is, I understand the committee did in fact sit that day. Then, of course, I heard that rather than continue with the amendments, the government said it was not ready and it needed some more time to think about its response to the public hearings.

1700

I thought that was fine and good. Who can blame them for perhaps trying to make very sure whatever they are proposing is in the best interests of the province and reflects, at least to a fair degree, what we heard over the summer? So I for one was giving the benefit of the doubt to the government and was willing to sit back and let some of the other important issues be discussed by the committee before we would get back to the Sunday shopping legislation.

But quite to my surprise I read over the weekend, and it was already pointed out, that the timing of the introduction of these amendments was rather questionable. Instead of putting them forward during the week when the House was in session, when some response could be given, they were put forward on a Friday afternoon. Nevertheless they did get coverage, so if anybody tried to hide what was being put forward by putting it out on a Friday afternoon I do not think that worked.

I was very surprised when I heard the main amendments that were being put forward by the minister because, quite frankly, they were not at all reflecting what we heard over the summer. Now we did have, to be fair, two sides. We had some people, although I think they were in the minority, who said: "This legislation ought to be made tougher. There should be fewer opportunities for stores to open." That view, I think, was particularly taken by union representatives, by certain church groups, by a few municipalities. But many, many people of course, and especially from the business sector and communities that have had experience with Sunday opening, came and said: "Either drop this legislation altogether and leave the situation the way it is, in other words maintain the Liberal legislation in place, or whatever you bring in, certainly don't make it more complicated. Certainly ensure that we're not going to have more bureaucracy. We already have lots of bureaucracy."

What do we see now? What is coming in from the ministry? It is precisely the opposite. It is another way of making the whole thing extremely complex and, as my colleague has just indicated at great length, it is going to add costs, manpower and womanpower, certainly to the municipal board, which is already overburdened, and to the court system as well. I do want to talk about that a little bit later because my colleague from Ottawa West addressed mostly the Ontario Municipal Board situation, but there is of course that other amendment in here as well whereby any interested person can make an application to the Ontario Court to order that a retail business establishment close on a holiday to ensure compliance with this act. That again places a tremendous burden on a system that is already extremely overloaded, and I will be speaking to that a little bit later.



One of the points the parliamentary assistant made over the summer, time and time again—it must have been at least—

**Mr Carr:** A hundred and fifty times.

**Mr Daigeler:** And he is just repeating it now. I remember that so well. In fact it is ringing in my ears. He did it with a lot of charm, I must say, and it sounded very convincing: "We're listening." It is about all he could say because he knew as well as we did that, while the parliamentary assistant was listening—and I must give him credit for being with us most of the time and for in fact listening to the witnesses—I think either his communication to his minister did not work or the minister himself did not listen to the parliamentary assistant because suddenly what we are seeing are amendments that are not what I heard, are not what we heard as a committee, and are making the whole matter a bureaucratic nightmare. I think the government was putting forward the idea that, "Yes, we have to have," and that was the main idea it put forward, "a common pause day in the province." The Solicitor General, both the previous one and the new one, now came before the committee and they said, "That's the main purpose of this bill. We want to maintain the integrity of a common pause day."

But really these amendments are again just shifting the burden to another bureaucracy. They are making the whole system simply more cumbersome and much more elaborate and costly and doing nothing to really achieve the purpose that the government set for itself.

**Mr Chiarelli:** And adversarial.

**Mr Daigeler:** And it is making, as my colleague is saying, the whole thing extremely adversarial. I would have hoped that the parliamentary assistant would have had more impact with his own minister. I suspect, quite frankly, that another member of the government caucus, the member for Welland-Thorold, who came on as a member of the committee some time during the meetings, all of a sudden put the twist either on the Premier or on the minister and said: "Listen, you let me down already on the car insurance and if you don't do what I want on this Sunday shopping bill I'm going to give you a really hard time. Either I'm going to start to sit as an independent or I'm going to raise a lot of hell in the House, because I went around campaigning last year, and that's why I got elected, that we, the NDP government, were going to make sure there is going to be a common pause day and all the workers are going to be protected. Therefore, this bill which is before us right now does not do that, and I want it strengthened, and I want to have real meat in this legislation."

I guess that is probably what happened, that the member for Welland-Thorold spoke to the Premier and to the minister and said, "Here's what I want," and that is probably why the government had to rethink its position, postpone the discussion of the amendments and now come in with what can only be described as a bureaucratic nightmare. I guess we will hear that later on whether what is being put forward satisfies Mr Kormos, but certainly it does not satisfy us in any way, shape or form because it does not reflect at all what we heard. In fact, the opposite

was what we heard. What we heard was, "Make the thing easy to deal with from an administrative point of view. Make a decision, but make it easy to administer."

I think that is what we are hearing in the province, everywhere, on every item. The last thing we need is more administration, more bureaucracy and more bureaucrats. Every time they increase administration and bureaucracy, obviously you get more bureaucrats. You have to have more staff, and I do not think it is fair to increase regulation and increase laws and requirements and dump it all on the civil service without providing them the resources that are needed. So yes, as the member for Ottawa West said, there is a cost associated with that, and we would like to hear what that is. Therefore, I certainly support the amendment that is being put forward. We would like to hear from the chairman of the Ontario Municipal Board, what he estimates the cost of these regulations is going to be, and also what in his view is the likelihood that the OMB can deal with this in any case.

The member for Ottawa West made reference to a number of presentations that were made with regard to the present functioning of the OMB, and I would just like to make a further remark and quote another document. This was a document that was presented by Frank Reid, a councillor in my city of Nepean; in fact, he is running for chairman of the Ottawa-Carleton region.

#### 1710

At a forum the Ottawa-Carleton Homebuilders' Association had on September 3, Mr Reid spoke about his experience as a municipal politician with the OMB. Here is what he had to say, and I would like to indicate that Mr Reid has been on our council for, I would say, at least 10 years if not longer, both as a local councillor first and then as a local councillor and regional councillor in the Ottawa-Carleton area. He has a lot of experience. He knows what he is talking about, and I think any municipal politician would come to the same conclusion after a very short while serving on council, and here is what he says: "The OMB role must be redefined and restricted, because it is not working. Since the late seventies, an appeal to the board has gone from three months to 16 months, with the exception of appeals to affordable housing which the current government is fast-tracking—" Fast-tracking to what? Listen to this: "—to six months." If you are talking about fast-tracking, we are going from 16 months to six months.

**Mr Chiarelli:** They want to fast-track in 90 days. It is a joke.

**Mr Daigeler:** Exactly. Really, when we are talking about the OMB, it already has an extremely full agenda and I am sure it will say, "Sorry, but we cannot cope with what we already have on our plate." Or they are going to say, "Well, if you insist on giving this to us, okay, give us that much more staff. Give us this many more members on the OMB and we will look into it, but we should let you know that is what it is going to cost you, and then we can make a decision on it."

I think it is only fair and proper that we should have this information before the committee before we discuss any kind of amendments. I also feel that what is being put

forward by the government—and I think this is very important as well—is a very significant change to what we have presented to the public this summer. Therefore, I do agree with the member for Ottawa West that we should reopen the public hearing process, at least for a short while, to give the public an opportunity to comment on this, because it goes so much against what they said to us, and these amendments that have been put forward are certainly not at all what the government was putting before them when we had the public hearings.

I think it would only be fair to again give the public a chance to say what they think about these appeals to the OMB and also the right for any individual to go to court. As I indicated, I did want to speak a little bit about that appeal option to the Ontario Court (General Division).

We all know—and we spoke about it at tremendous length in the last session—how clogged the Ontario justice system is at the present time. We know how much it costs and what the Attorney General did to try to free up that system a little bit. We have very serious cases and, in fact, people in my own riding have written to me and have been terribly upset at some of the cases that, at least in the first instance, were being thrown out because the waiting period was too long.

There was a case in my riding where five teenagers were killed in a very unfortunate accident. The driver was charged, and on the first hearing it was thrown out of court because it had taken too long to reach the system. As it happens, the case was appealed by the crown and I think the decision was then made by the Court of Appeal that the case should go ahead. I am just using this as an example of how many very serious cases are being thrown out or looked at again, and have to reach the appeal court even before they are looked into properly because the system is so clogged.

Instead of freeing up the system—and I cannot understand this for the life of me—on the one hand the Attorney General is appointing more judges and saying he wants the system speeded up, freed up, and on the other hand he is adding more work, and really quite unnecessary work, to the court system. Either the left hand does not know what the right hand is doing and the Attorney General is not talking to the Solicitor General, or they are totally confused.

It makes very little sense to me. If it does make sense, I am certainly prepared to be enlightened. I am always ready to learn more. If there is a good reason and a good explanation as to why this would make sense, I am prepared to change my mind and say, "Okay, you have a point, but let's hear from the Attorney General and from the people who are involved currently in the court system and the justice system as to whether they feel they are currently prepared to accept these responsibilities." Also, what would it cost? What are the implications in terms of staff, in terms of dollars that are associated with this kind of an amendment to the current bill?

When we have a court system that is already under tremendous strain and is unable, or able only with great difficulty, to look into very serious criminal charges and other charges that people feel very strongly about, when they are not able to deal with those issues in good time,

you are asking them to look into appeals made by any particular person if someone opens a store. I do not think that makes any sense. If there is any sense to it, let someone come before the committee and explain it to me. I am certainly willing to hear that.

Finally, I would like to refer again to the Ontario Municipal Board and how long it took to look at a case in the Ottawa-Carleton area. You are all familiar with the Palladium and the decision to bring the Senators back to Ottawa. Even though that was given top priority by the OMB—and we in Ottawa were thankful for that—it still took at least two months of hearings, and all the energies of the OMB were directed towards solving that problem. I am sure many other concerns, equally urgent, had to be pushed aside for the time being. What is going to happen to all these applications with regard to tourism exemptions if cases like the Palladium occur again at the OMB? I am sure they will, because there are always cases that are of very great importance to a particular municipality. The municipal board will have to make a decision and say, "We can only deal with so much."

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I certainly agree with the amendment to the motion, that we should do two things. First, we should hear from the officials of both the OMB and the Attorney General's office as to whether they could possibly cope with these kinds of amendments that are being proposed, if they are implemented. Second, we should again listen to the public and hear from them what they have to say about these proposals, whether they think it makes any sense and whether that is really what they wanted; whether they were for the general principle of the legislation that was being put forward or whether they think this makes sense if they were against the general principle that was being put forward by the legislation.

On that, Mr Chairman, I certainly would indicate that I will support the amendment that is being put forward by the member for Ottawa West. I am sure some of my colleagues will still want to address the same point.

**The Chair:** Mr Morrow, on the amendment.

**Mr Morrow:** I would only speak to the amendment, naturally. I want to refer to an article in the Toronto Star of September 14, 1991, "NDP Infighting Blamed for Stall on Shopping Law." The way I look at the amendment and the original motion, this headline should now read, "Liberals Blamed for Stall on Shopping Law."

I want to go to the Toronto Star again, September 17, 1991, "Sunday Law Delay Called Risk to Stores," an interesting title compared to what is going on here today. There are a few excerpts I am going to read from here, if you do not mind. "Liberal MPP Greg Sorbara (York Centre) warned yesterday the New Democrats are in such disarray they won't pass a new law until the new year." It seems to me that is what this amendment wants to do, if I am correct. Also, "As we head into the most important shopping season of the year, the government has failed to provide direction to retailers, workers and consumers," Sorbara said." It seems to me we want to give direction, we want to move to clause by clause. "Christmas 1991 is going to



make or break a hell of a lot of retailers out there," Mr Poirier said. Funny, we want to resolve this by Christmas.

As I just keep moving on, we will go to the Toronto Sun, "NDP Stalls on Sunday Shopping Law." It seems to me the Liberals are now stalling on the Sunday shopping law.

**Mr Chiarelli:** What law are you talking about? You have a new law.

**Mr Morrow:** Now I move to CHCH TV. Greg Sorbara: "Well, it's the most dramatic stalling tactic that I've ever seen thus far. The unfortunate part is it leaves the entire province in great uncertainty as to where the government is going. This is very difficult for retailers. It's difficult for people who are trying to organize their workforce and the workers, particularly the Sunday rush."

Who is obviously out to stall here? Uncertainty is a bad thing obviously, if we do it. Are you telling me now uncertainty is a good thing if you do it? That does not make a heck of a lot of sense, does it?

**The Chair:** Thank you, Mr Morrow. Mr Carr.

**Mr Chiarelli:** Next time answer my questions.

**Mr Fletcher:** Next time ask them.

**Mr Chiarelli:** You have no answers.

**Mr Fletcher:** You have no questions.

**Interjection:** What are your questions?

**Mr Morrow:** No questions, no answers.

**The Chair:** Order, please. Mr Poirier has the floor.

**Mr Poirier:** I understand what my good friend Mr Morrow has just mentioned. I was one of the persons who was very upset on that Monday morning, September 16, when I heard that resolution. He could also have quoted me in the media saying, "Come on, guys, pull up your little sockies and get to work." Quite true, but in all perspective, at the time when we were very pressed to bring this forward in time for Christmas, we did not have the type of amendments that were put forward last Friday by the government on this subject. Obviously it throws a whole different light on what is proposed to be done.

I am upset that we have to stop—more than slow down, we have to stop—and get feedback from some very important people based on this new evidence of these government-proposed amendments that were brought forward last Friday. If I had known that on September 16, even though we were very upset, that we will not have this in time for Christmas—I cannot believe what I am hearing.

I had a rough day on Friday. I was not working on Friday. I had to bring my father into a nursing home because he has Alzheimer's now. It was a very upsetting day for me. After having brought in my father, realizing that he is never going to come back to the farm for the rest of his life, I got a whole bunch of telephone calls from the media asking for my comments on these proposed amendments.

By the way, like I said, I thought you guys might be different from the horrible Tories and Liberals and do things differently, but I guess not. You come forward with these amendments at the end of a Friday. Okay, fair enough. Let's give you the benefit of the doubt. You bring them at the end of the day on Friday. The media phones

me and I say: "Let me know. I am at the farm right now. I don't have these up my nose, so read them to me. What do they want to do?" Then they start mentioning that. "Oh, my God, are you sure, guys? You want to read that to me again, please? I think I hear something, but I can't believe this." They did, and I gave them my comments. Now when I see the amendment that my colleague the member for Ottawa West wants to bring forward, we do not have much of a choice.

I have been a member here for close to seven years. You people are newer members. You may not have the joy, the pleasure of dealing with some of your constituents' dossiers in front of the OMB. You can retire with dignity dealing with dossiers in front of the OMB. As my friend the member for Nepean said, how many other important dossiers in front of OMB were delayed by that one Palladium dossier for Ottawa-Carleton.

What do you propose to do? On the one hand, the Attorney General is spinning his little tires trying to accelerate, to free up the courts. On the other hand, the Solicitor General, with all his goodwill to give every citizen of Ontario the right to put his or her finger in the plum pie on this issue, is going to tie them up like crazy, whether the courts themselves or the OMB. My God, when you have been here seven years, you will realize they do not put racing stripes and the GTO appellation on the OMB's functioning, with all due respect. Now you add this task to the OMB. If I were the chair of the OMB, if I were some of the people sitting on the tribunals of the OMB, I would have been having a bird last Friday.

Your Treasurer says he wants to cut back on some of the costs of government, and you are tying some incredible resource time and money constraints on to the OMB because of this. Somewhere across Ontario a whole bunch of Ontarians, for whatever reason, any interested party anywhere on any topic pertaining to this, will say: "Hey, I have a right to put my finger in the dike. Stop this flow here. No, don't you dare do this." My goodness, if I were the chair of the OMB, or if I were sitting in the Attorney General's office, I would be saying: "Oh, my God, here we go. The lottery has come forward." I can just see it, vigilante committees going around with their little red books on Bill 115, as amended, coming forward, checking for everything, bringing this forward to the OMB, just tying up the OMB like hell, not for months but for years to come.

If I were a lawyer, my goodness, what a bonanza you would be giving me every time you come forward and bring Bill 115 or the proposed amendments to Bill 115. I would want to write you a thank-you letter. You would be assuring my livelihood for the next couple of years. My goodness, I almost feel like leaving the House, going to law school and starting a lawyer's practice. My God, what a bonanza.

**Mr Chiarelli:** A payoff to the lawyers for no-fault.

1730

**Mr Poirier:** It is sure great compensation for that. You are giving on a silver platter some great opportunities for people to bog down, tie down, add to costs, to the complexity

and to the bureaucracy of the entire principle of something you told us would be simple in Bill 115. I definitely do not see it as a simple bill, and it is even a heck of a lot worse now.

I understand where you are coming from with these proposed amendments. Obviously certain groups and certain individuals wanted this through the summer. They wanted to have their fingers in the plum pie and say, "I want to be able to put the brakes to all of this, because I don't trust municipalities. I don't trust other interest groups to be able to decide for me on this, so as an individual I want to be able to put the whole thing in stop motion."

Congratulations, you have done it, but who are your advisers in this dossier? They are definitely not realists. They have never worked as MPPs and had to deal with the OMB with dossiers from their own constituents. They have never had to face off with their very irate constituents who have had to wait months and months. I had to deal with one this morning in front of the OMB who has waited two years. Obviously your advisers have never had the pleasure of dealing with this type of dossier.

This is like a lottery. You are making a lottery for a lot of people to make money on this. As my friend the member for Ottawa West mentioned, if I were a business person in Prescott and Russell and somebody somewhere in Sault Ste Marie, Thunder Bay or Niagara Falls came up in front of the OMB and said, "I don't like what Poirier is trying to do with his business and the way he's trying to operate this business on a Sunday or on a holiday," I would be rather upset.

If somebody from my community came forward and showed an objection I could live with that, but to have somebody all the way from across Ontario because he or she might have some beliefs different from mine coming forward and putting a stop to what I am trying to do bona fide with respect to Bill 115, the way I would perceive it, nice thought. Who has ever thought of this for these kinds of amendments? I do not understand that.

We cannot go on with the bill with these amendments. I want to hear what this is going to do, and I think you would want to hear also. When somebody non-political from the OMB or the Attorney General's office will tell you what your proposed amendments are going to do to the mess, would you listen? Would you be able to put that on the scale and consider the incredible boondoggle you will be putting forward with these proposed amendments?

**Mr Fletcher:** You were there for five years and you did not listen to anything, so why are you asking me?

**Mr Poirier:** Whenever a government comes forward with a proposed bill, I guess you will understand that at best, in good faith, no matter which party is in there, you will have to make some compromises. I do not think this is much of a compromise. I was there throughout the summer and, as is usual in a lot of public hearings, no matter what the bill or who is in government, you hear a whole gamut of opinions all the way from the left to the right by passing through the centre.

This is an incredible nightmare. I guess somebody in there must have a political death-wish to bring out these

types of amendments, because it is going to bog it down. It is going to be in front of the courts—it is in front now of the OMB—for years and years.

By amending the motion my friend is actually doing the government friends a favour, to show the difference between what you perceived or maybe have not perceived is going to happen with your proposed amendments, and what the reality will bring you, the incredible boondoggle of a mess, the administrative quagmire your proposed amendments are going to do to the functioning of this government.

If I were the Treasurer I would be going snake because you would be adding a heck of a lot of costs, unless the Treasurer says, "I'm sorry, dear friends of the OMB, I can't give you the extra money for the extra resources you'll need to deal with this." I am going to support strongly the amendment of my friend the member for Ottawa West and I regret that, because I was pushing you people to bring in a bill earlier to discuss it clause by clause. But with these amendments I cannot push for that right now because the business people are going to be very worried about this. Even though my good friend from Guelph says there have been other Christmases before and there will be other Christmases afterwards, this coming Christmas season, the holiday season of 1991, is definitely going to be a make-it or break-it season for a lot of Ontario businesses, small, medium or large. Because of the wacky nature of your proposed amendments, with all due respect, what are the people going to be able to do in time for Christmas and the holiday season? We have to discuss that. We have to bring this forward so we can listen to them and so you can understand and see the incredible mess you are coming forward with.

**The Chair:** Mr Carr, to the amendment.

**Mr Carr:** As I look at this amendment that was moved, I will be supporting it. On Friday when I, like everyone else, saw the press release announcing it, I had almost the same thoughts as Mr Poirier. I looked at it and wondered who is going to take responsibility for this, if it had been designed by anybody in the Solicitor General's office. I think most of them are filing out, whoever has the responsibility for this, taking it to the OMB. I think ultimately it probably comes from the cabinet's lack of decision. If I did not know better I would have thought they were joking when they actually brought this in, because essentially it goes to the very nature of the credibility of this government.

I heard Ed Philip in the riding of Oakville last week where he said, "We're going to be listening to business, we care about what business thinks, and in spite of what's been said about us being antibusiness we're going to attempt to listen to the people." Then they turned around and brought something in—it was interesting. Some of you may remember I asked the Minister of Industry, Trade and Technology in question period last week whether he was going to implement some of the recommendations of the Ontario Chamber of Commerce and he said: "They would be in. When this strategy comes out you're going to see that we listened to them." Then you look at it and see in a



bill like this that they did not listen to any of the recommendations.

For those of you who did not sit on the committee, most of the hearings—the other ones who did will remember the proposals of the chambers almost verbatim as we went around—nothing in these amendments speaks to what those people of the chambers said. As you can well imagine, there was a great deal of debate, but the Ontario chamber and the various chambers that came around laid out very clearly what they wanted to see. If I can paraphrase a lot of them, the biggest fact is that they said: “We don’t need any more regulation. Let the free market decide. Those who want to open, great. If they don’t, they don’t have to.”

So what did we do? Not only did we take a bad bill they were criticizing and put more regulations into it, we added another level that is just going to make it so that if somebody wants to stay open and gets the approval from the particular municipality, then any individual will be able to take it to the OMB. I know the members opposite will say the process is going to be fast, but the public is a lot smarter. First, they realize that if you are going to add more people to handle it, maybe those costs should be better spent in other areas. When I sit and reflect on last year when they threw the \$750 million into the antirecession program and then one year later we are talking about making an equal amount of cuts, it is nothing but a shell game. You give on the one hand to try to get some publicity to say that you are doing something, and then a year later you do not cut that \$750 million you have spent; you cut it from other areas, and it may be through hospitals or through Community and Social Services.

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Today I had a group from my riding talking to the Minister of Education about funding for a school with a very high ethnic population. There were some very practical solutions about how we are going to attempt to have some of the support services for some of the people in the school who cannot speak English and are having to leave their children, and about some children who do not even understand English yet. It was interesting to see that she talked about some of the resources. As she said, there are limited resources out there.

Yet at the very time we talk about that, this government tries to defend itself and say: “Don’t worry, the OMB—this is going to be fast-tracked,” as if the public actually believes—whether it is new people who are added or the same people spending time on this—that it does not somehow take away from some of the other responsibilities that are backed up. At a time in our history when we are running deficits and talking about where we are going to allocate resources, and they say that outside of taxes the number one concern is the regulatory process, they come in and do the very thing that is going to add a delay, regulations or red tape for business.

We have in this province a Minister of Industry, Trade and Technology who stood up in Oakville and said, “We’re listening,” and stood up in the House last week and said, “We’re listening,” but the proposal the Ontario chamber put forward that addressed some of these issues, I can tell

you he was not listening there. One of two things is happening. Either Mr Philip is going around and championing this and losing the battle at the cabinet table—which probably is the case, because there are many conflicting debates around the cabinet table, as my friend Mrs Carter will know, having spent some time in there; there are people debating on various issues. But here we have a ministry that is probably the most significant over the next little while as we try to get our industry back in shape, and none of the recommendations of the Ontario chamber were listened to one little bit with this. That is why people get a little cynical and sceptical with the process. They took out the part about the chambers. I think everybody admits that was a mistake and a bit of an oversight.

These things will happen when a bill is made, although it was interesting to see that they talked about speaking with business and how they wanted to work with them. Then, the first time the chamber saw that particular piece of legislation, lo and behold, they were put in there without any consultation.

The process is very simple. The resources that are going to have to be put into the OMB to handle this will be either in increasing the staff to handle it—which would be a cost that probably would serve better to clear up the existing backlog before we jump into something else. As I mentioned today, all these ideas sound great when they are championed around the table, just like the Rent Review Hearings Board sounded like a great idea: We will just have somebody who will oversee, as a dispute mechanism. But the fact of the matter is that within a short time the cost goes up to about \$40 million a year and we are looking at a backlog situation of somewhere in the neighbourhood of 1,000 cases dealing with that. What starts out as a very rational proposal saying, “We’ll just set up this board to oversee it and if there are any mistakes made in the amount of increases, they’ll be able to catch it,” the fact of the matter now is that a lot of people are not even going before it because the process is taking so long that they are completely fed up. Then we wonder why people get a little cynical and sceptical about government and the process.

We all know they are extremely sceptical about government and how they operate, and it is not the fault of anybody working there. If you are sitting on the OMB, you are probably working extremely hard just to end up each month farther and farther behind. The more cases you hear, the more time is spent. Each day that passes you get farther and farther behind. You would think the government would take a look at it with a little common sense and say: “We can’t add to that. Maybe there’s something we can do. If we’re going to spend X amount, maybe we should reduce the amount of the existing backlog that is there for many worthwhile cases that are before the OMB.”

Then we have the other proposal that is being looked at, where we are going to have any individual being able to take it before the courts at a time when the public is saying, if you are going to put resources there, that whatever amount you put into it, whether it be civil or criminal, the amount that is spent, whether it is \$100 or \$100 million, could possibly be used to deal with the more pressing

problem, which is the fact that well over 35,000 cases are being thrown out. As we often hear, we put tremendous programs together to talk about drinking and driving, spend literally millions of dollars on that; and then at the other end of it, instead of clamping down on some of the offenders, as a result of the backlog those people are walking free.

The public sits there and looks at it. They shake their heads and say: "You people must be crazy. On the one hand you're talking about making it tougher and cutting down, you've got the Reduce Impaired Driving Everywhere programs, and then all of a sudden at the other end, you have to spring them free because they didn't have the resources." So whatever amount is going to be spent on the courts to assist that, whether it be \$100 or \$100 million, could best be plowed into dealing with the existing court backlog that is there.

I think it really comes down to one fundamental principle. As you know—and I have said this many times—as we were travelling around, the various municipalities said, "We are going to have Sunday shopping in our municipality." The Windsors and the Thunder Bays and the Kingstons all said that. At the end of the day, I think what the government is trying to do is say: "Well, we put all these safeguards in place. Sunday shopping is there. We realize we made a commitment for a common pause day but now we can blame the OMB because they okayed it, and we can now blame the municipality because they initiated it."

In my mind it is nothing but a case of being able to pass the buck off to somebody else so that four years from now when somebody comes up to Mr Rae on the campaign trail and says to him, "Mr Rae, you said you'd have a common pause day. I live in Windsor, Ontario and I don't have a common pause day on Sunday," he is going to be able to say, "Well, there it is. It is not my fault. The council in Windsor first of all passed the bylaw and then the OMB agreed to it. See, it's not my fault. I am off the hook."

All these resources are going to be plowed into it for only one reason: to allow the Premier of this province to get off the hook on a commitment that he made. I think, again, if the people of this province heard from the Premier: "Well, we made a mistake when we made that particular promise. Things have changed. We have heard from the people," whatever—instead, they play these little games, I will call them, with the public to try and make it appear, at the end of the day, that it was not their fault. "We did everything we could." The speech has been trumpeted. The press releases that come out continually say, "We're sticking to our guns on the common pause day," in spite of the fact when we went around the province, everybody was saying it is not going to happen.

Nothing has changed. This government has not been any different. My friend Gord Mills sat almost daily and said, "We're listening." When I saw what came through, indeed they were not listening to the vast, significant portion who came before the committee. It was interesting, as I spent some time meeting with various business groups—and I am meeting with people in business and labour as a result of my new responsibility as industry, trade and tech

critic—most of them are saying: "We don't have the time to go before committees because in the vast majority of cases, the government of the day is going to do what it wants. They don't listen to the committees."

That included a lot of them who were going to appear before the standing committee on finance and economic affairs, the ones who were going to appear on Sunday shopping. They say: "Governments are going to do whatever they want anyway. Look at that; we have a proposal from the Ontario chamber and they don't implement anything that was written as a result of some of those great presentations that were made by people who gave up time away from their small businesses"—and, I suspect, if the truth was known, gave up a lot of income to come before the committee and speak. Then nothing gets done with regard to what they say. I think that is why people out there are a little bit cynical and sceptical. We continually reinforce that. We have a situation now where we bring in the amendments that have nothing to do with the public input of the day. We are going to clog the system, the courts and the OMB.

I think what the member wants to do with this particular resolution is say: "Okay, fine. We've been burned by governments of all political stripes, at all levels. So I personally want to hear from the people on the OMB and the people from the Ministry of the Attorney General, who are very familiar with the court system, just to see exactly what we are looking at."

When it comes to projections for deficits and where the spending is going to be and everything else, we can always have the economists and accountants come in and tell us what it is going to cost. I would like to know what these particular changes and amendments are going to cost.

What is it going to be in terms of time? I think everybody realizes that regardless of how many municipalities decide to enact legislation to open, in fact every one of those will be taken to the OMB. Any municipality will have at least one individual who will be able to say, "It wasn't interpreted properly," so there we go. Ultimately, what has happened even with our court situation is that we bend over backwards to try to have so much sober second thought on it that the whole system gets broken down and nobody, but nobody, gets served by it.

Some of the things I will be talking about when we do get to it will be with regard to having some of the legislation in regulation. I have talked at length about that. I would like to see the regulations put into the bill. We will be talking about changes of some of the square footage. As you will remember, even the folks who got together from Loblaws and came in with the United Food and Commercial Workers Union, even though they agreed and said, "We'd like to stay closed," they also said, "But if this bill goes through, we want to make sure that 7,500-foot restriction is removed so that we will at least be on a level playing field with some of the other people," whether they be grocery stores or other people who might be competing with them.

I guess my feeling is that if this did not fundamentally change it, then I would not be supporting this motion, but I



think this bill does. I guess, Mr Chair, I look for your guidance.

**Mr Carr:** We have to adjourn now for a vote in the House.

**Mr Chiarelli:** Can I just make one brief point beforehand? I would request the clerk to ask for Instant Hansard as early as possible tomorrow. Is that possible?

**The Chair:** Duly noted, Mr Chiarelli.

**Mr Carr:** I am very enamoured of the non-response.

**The Chair:** Mr Carr has moved adjournment.

**Mr Morrow:** On a point of order, please, Mr Chairman: This is not an obvious, real point of order but, because all the House leaders have agreed that the opposition

parties have to have time to caucus on these amendments, can we adjourn until a week tomorrow?

**The Chair:** That is not a point of order, Mr Morrow.

**Mr Morrow:** While you adjourned, I was trying to get in. Can we have unanimous consent to do that, please? Can we have unanimous consent to that, please, so both opposition parties can caucus?

**The Chair:** Do we have unanimous consent not to meet until a week from Monday?

**Mr Chiarelli:** Not unanimous consent; only if they agree that they will caucus it again too.

**The Chair:** No unanimous consent? We are adjourned until tomorrow at 3:30.

The committee adjourned at 1753.

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** Cooper, Mike (Kitchener-Wilmot NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
Carr, Gary (Oakville South PC)  
Carter, Jenny (Peterborough NDP)  
Chiarelli, Robert (Ottawa West L)  
Fletcher, Derek (Guelph NDP)  
Harnick, Charles (Willowdale PC)  
Mathyssen, Irene (Middlesex NDP)  
Mills, Gordon (Durham East NDP)  
Poirier, Jean (Prescott and Russell L)  
Sorbara, Gregory S. (York Centre L)  
Winninger, David (London South NDP)

**Also taking part:** Daigeler, Hans (Nepean L)

**Clerk:** Freedman, Lisa

**Staff:** Beecroft, Doug, Research Officer, Legislative Research Service









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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 8 October 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 8 octobre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 8 October 1991

The committee met at 1540 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** We are continuing debate on Mr Chiarelli's amendment to Mr Morrow's motion. Is there any further debate? Mr Harnick.

**Mr Harnick:** It is interesting to note—

Interjections.

**Mr Harnick:** Mr Chairman, could you call the room to order, particularly the minister, who I notice is here to suffer with us through this unbearable piece of legislation, made more unbearable by the amendments that were provided on a Friday afternoon in typical socialist-government style.

Of interest before us now is a motion that was brought by Mr Morrow and it states that clause-by-clause consideration—well, let me go back. We now have a motion in front of us to bring back the Sunday shopping legislation that was adjourned a few weeks ago. When that was adjourned a few weeks ago, it was by way of a motion from Mr Morrow, who moved that clause-by-clause consideration of Bill 115 be postponed to a future date as agreed to by the committee. Of course, in typical NDP style, the wording of that motion was without any thought. Now they have brought a motion to bring it back.

**The Chair:** Mr Harnick, may I remind you we are speaking to the amendments.

**Mr Harnick:** I am getting to the amendments. No, we are not speaking to the amendments; we are speaking to a motion.

**The Chair:** Mr Chiarelli's amendment to Mr Morrow's motion.

**Mr Harnick:** That is right. Mr Chiarelli's amendment was to see if we defer this until January. If we go back and look at this whole transaction from the beginning, it is interesting to note that because of the wording of Mr Morrow's original motion, which says that it will be postponed to a future date, as agreed to, that means we have to have agreement to bring this matter back.

That is the wording of the motion that Mr Morrow put before us, and prior to getting into this any further—and I do not wish to give up my opportunity to speak—I think the chairman should, by way of a preliminary matter, determine whether any of this is in order at all.

The fact of the matter is that Mr Morrow's precise motion was that this would be postponed to a future date as agreed to by the committee. I am submitting to you, Mr Chair, that we cannot sit in this committee and do this by way of speeches and motions and interim motions for amending the motion on the floor. We have to look at the wording of Mr Morrow's motion. It says that we must agree to the date that this is coming back, and it is very precise.

By way of a point of order, I think that before we go any further, you must determine whether we are going through the motions here, because I submit that this is a waste of time. We all have to sit down and agree to a date to bring this back, and unless we can agree, this particular piece of legislation, as of now, is dead in the water because we cannot agree.

**Mr Winner:** In your humble opinion.

**Mr Harnick:** In my humble opinion it is. The date submitted by the Liberals would obviously be the starting point that we have to be at, and we have to sit down as a subcommittee, because that is why we have a subcommittee, to agree to the date to bring this back. I think you were premature in continuing any discussion about this matter. You have a subcommittee, you have rules, you have standing orders. I would like the clerk to hear this, if Mr Morrow can—

**Mr Morrow:** I am asking a question, if you do not mind.

**Mr Harnick:** Maybe you should wait to ask your question. You have already brought the fatal motion. It seems to me that we have a subcommittee made up of representatives of each of the parties. Prior to this motion appearing here—and I think what is going on here is totally out of order—we must take this to the subcommittee and the future date must be agreed to, according to Mr Morrow's motion. I do not know what attempts there have been to agree to a date, but that is what the motion says. Pursuant to the standing orders, I think you were premature in proceeding with this matter and we should be adjourned today. We should be adjourned until the subcommittee, which is a group of three people, so that there is a way to break a deadlock—

**Mr Morrow:** On a point of order, Mr Chairman.

**Mr Harnick:** No, you cannot interrupt my point of order.

**The Chair:** If I may make my ruling right now—

**Mr Harnick:** Well, let me finish. Let me finish.

**The Chair:** I do not think we need any further debate.

**Mr Harnick:** Then your partisanship has prevented you from being objective in making a ruling from the chair, if you are prepared to make the ruling without even hearing me finish. I can see that you are biased and you should remove yourself from the chair. You cannot contain order in this room as a Chairman and now you—

**The Chair:** My ruling is that the motion is in order, because what we are trying to find here is agreement within the committee. Agreement means the majority of the committee, not unanimous consent.

**Mr Harnick:** With all due respect, we have subcommittees. We have subcommittees where this should have been agreed to. I am telling you that pursuant to the standing orders, you are out of order bringing this to the committee prior to its going to the subcommittee.

**Mr Fletcher:** Are you challenging the Chair?

**Mr Morrow:** Are you challenging the Chair?

**Mr Harnick:** No, I am finishing my submission.

**The Chair:** Mr Harnick, I have already made my ruling. Mr Morrow on a point of order.

**Mr Morrow:** The point of order is, are we dealing with my original motion to defer this to a later date?

**Mr Harnick:** Your original motion told us how to do—

**The Chair:** We are dealing with Mr Chiarelli's amendment to your original motion.

**Mr Morrow:** That is what I thought we were dealing with. Thank you very much.

**Mr Sorbara:** On a point of order, Mr Chair: I think there is a little bit of confusion now with the committee. My impression was that, as you correctly stated, we were debating the amendment moved by Mr Chiarelli to the main motion moved by Mr Morrow. My friend Mr Harnick was speaking to that amendment, not on a point of order. He was speaking on the amendment and therefore a ruling as to the content of his speech was technically, sir, inappropriate.

I did note, however, that in his remarks he seemed to move from being the first speaker today on the motion to sort of coming in the back door with a point of order without advising the committee that he was terminating his remarks for the moment to raise a point of order. So I just put it to you, where are we in these proceedings? Does Mr Harnick have the floor and is he speaking to the amendment moved by Mr Chiarelli to the motion moved by Mr Morrow? If he is, do not interrupt him.

**The Chair:** If Mr Harnick chooses to speak to the amendment, he does have the floor.

**Mr Sorbara:** Yes, good. Why do we not just get on with that?

**Mr Harnick:** Now that my point of order has been ruled upon, I am prepared to discuss Mr Chiarelli's very sound amendment to the motion that is on the floor. His amendment, as I understand it, is to defer the Sunday shopping legislation until January. The essence of the amendment indicates that the government should go back to the drawing board. They should reconsider this matter and they should take the necessary time to do it properly,

either to scrap this legislation altogether or to bring in proper amendments that will accomplish something. These amendments will not accomplish anything except continuing a regime of Sunday shopping legislation that is imprecise, that breeds confusion and that causes a lot of hardship to a lot of people.

1550

I go back to May 16, 1990, when the Metropolitan Toronto Police Force recommended two options. They recommended that the bylaw should be written clearly, without exemptions, and allow retail establishments the choice of legally remaining open on Sunday during prescribed hours; very simple, very straightforward, and something that we could all live with. Their other option was that all retail businesses, with the exception of restaurants, cinemas, theatres, etc, must close on Sunday. You have two very precise options, not the muddle that you have now made worse by the amendments that have been proposed.

If you want a common pause day and you want that common pause day to reflect your particular interests in society—because Sunday does not represent my interests; it may represent your interests—then go ahead and pick option 2, because option 2 says that all retail businesses close and we have a level playing field. We do not have a myriad of exemptions. It is understandable by all and it represents the NDP common pause day. It certainly does not represent my common pause day or the common pause day of numerous people in Ontario. But if that represents the NDP common pause day, then that is what you should do.

Let me move on to discuss the amendments. The amendments do nothing to follow either option 1 or option 2, as set out by the Metropolitan Toronto Police Force. The amendments merely attempt to rid the exemptions that the government wrote into the original piece of legislation. The government decided that it wanted to have Sunday shopping, but it had second thoughts because it also wanted to have a pause day. Like everything else this government does, the left hand cannot agree on what the right hand is doing. They decided to make things even more confused, and they came up with a whole pile of amendments, the gist of which would be to eliminate the exemptions, the tourist exemptions and whatever other exemptions there are, by permitting people access to the Ontario Municipal Board. I point out in the amendment of subsection 1(3.1), which is subsection 8(1) of the act, that any interested person can apply to the Ontario court to obtain an order that a retail establishment close. So anybody can come along and close up a business.

The other method of doing that is the amendment by way of subsection 1(1) of the bill, subsection 4(6) of the act. That basically says that a municipality shall hold a public meeting in respect of a proposed bylaw for a tourist exemption. They will publish a notice of the public meeting and they will permit anybody who wants to do so to come and make representations. Then the next step would be that they will go ahead and any person who objects, after they have gone through the charade of the public meeting, can go to the Ontario Municipal Board by filing a copy of a notice of appeal, setting out the nature of the objection to the bylaw and the reasons that support the



objection. This notice of appeal must be filed not later than 30 days after the bylaw is passed by the council.

Anybody, no matter where he lives, can go to the Ontario Municipal Board. They might live in Toronto and not like the fact that Hamilton might have a Sunday shopping bylaw, a tourist exemption, that permits Sunday shopping in Hamilton. That person from Toronto will wander on down the Queen Elizabeth Way and file his objection with the municipal board because he does not like Sunday shopping in Hamilton even though he lives in Toronto. They can do that by filing an objection.

**Mr Morrow:** On a point of order, Mr Chair: I would just like to point out that we have the honourable minister sitting here. The Honourable Allan Pilkey being very busy, if we are going to deal with the amendments to my original motion, is it agreeable that the minister can now leave?

**The Chair:** As in our discussion at the last meeting, Mr Morrow, it is up to the minister whether he wishes to stay or leave.

**Mr Morrow:** He has been here every day. Thank you very much.

**Mr Harnick:** I think it is a rather wonderful thing that the minister is coming here to listen to this and I think, if anything, the minister should be credited for being here so he can hear the opinions of people on this committee. The minister does us all proud because he shows he is listening. He is here and he understands the problems. I find it hard to believe that members of his own party want him to leave and not listen to what is going on here because a light may go on and the minister may say, "I really can make this legislation better than it is." I think the minister is to be credited for being here.

Interjections.

**Mr Sorbara:** On a point of order, Mr Chair: My good friend the member for Guelph used a term that I do not think ought to be used in this committee, so if he will just retract, we will get on with the debate and expeditiously move through discussion of the amendment to the motion that Mr Morrow moved. I invite him to do that on behalf of my party.

**The Chair:** I did not hear what he said.

**Mr Sorbara:** I will put it on the record again. He said, "The member is slime." The member is not slime. The member is a good and faithful representative of his constituents. If my friend Mr Fletcher just withdraws that, we can get on expeditiously with the debate.

**The Chair:** I am sure if that is what the member said, he would be more than happy to withdraw.

**Mr Fletcher:** Are you asking me to withdraw, Mr Chair?

**Mr Sorbara:** It is not a difficult thing to do, Derek. Just say, "I withdraw the remark."

**The Chair:** If that is what you said.

**Mr Fletcher:** Mr Chair, I have no problem withdrawing the statement as long as the member at least has the courtesy not to twist someone else's words around.

**The Chair:** Are you withdrawing, Mr Fletcher?

**Mr Fletcher:** Of course, I said I would.

**The Chair:** Thank you. Mr Harnick, you have the floor on the amendment.

**Mr Harnick:** Just carrying on, the essence of what I am saying is that these amendments are a total contradiction of the act as it first arrived. It shows that time has not been taken to deliver amendments that make any logical sense out of what people said when they came to this committee. I think to offer a tourist exemption and then take it away shows that the government does not know what it wants to do with this legislation.

They offer a tourist exemption so there can be Sunday shopping. They then realize that the tourist exemption can be implemented by every single municipality in this province, and virtually every municipality in this province has indicated that it will implement the tourist exemption. So what does the government do? It hastily goes back and provides amendments that will surely defeat the whole intent of the legislation on its face.

These amendments are so contradictory to the original parts of the act that still exist, they cannot rest side by side and have anybody walk away and say, "We now have good Sunday shopping legislation." What I believe should happen is that Mr Chiarelli's amendment to the motion will permit the minister to take this legislation back and decide whether he wants the options that the Metropolitan Toronto Police indicated, the options they said were available, that either it should be written clearly without exemptions and allow the retail establishments the choice of legally remaining open on Sunday during prescribed hours, or all retail businesses, with the exception of restaurants, cinemas, theatres, etc, must close on Sunday.

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The minister now has a choice. He cannot leave these sections in the bill without their contradicting the sections as originally brought down. You cannot ask the police to enforce a piece of legislation that is so contradictory within its own body. I think you are asking the impossible of law enforcement officers. These proposed amendments are totally contradictory to the act as presented. You cannot have it every which way; you have to make a decision. If you cannot make a decision, then hoist the whole thing and start over. That is what Mr Chiarelli's motion will give you the opportunity to do. Nobody is going to hold it against you; they are going to applaud you. But if this legislation remains as it is, they are going to make a mockery of it. It is a joke and people are going to use this legislation to embarrass the Solicitor General.

If the Solicitor General takes it, reviews it and tries again and takes it back to the drawing board—and he can do that. He was not the minister who delivered this bill to start with, so he has that option. He is not contradicting himself, he is going back and starting again. He is starting again and he is going to bring back a bill that is not contradictory within the same act. He is not going to have sections that say, "You can shop on Sunday because you have a tourist exemption," and other sections that say, "There will be no tourist exemption if anybody objects."

I have not even started to get into the idea of the Ontario Municipal Board hearing objections. There can be thousands and thousands of objections across this province. How is the Ontario Municipal Board going to handle these objections? Surely this idea is ill-conceived. I know Mr Winninger is familiar with the Ontario Municipal Board and he will be the first person to tell you that it cannot handle the volume of cases it has now. If thousands of people object, and I suspect it will happen, how is that board going to be able to handle it? They cannot possibly handle this amendment.

**Mr Winninger:** Not so. They say they can.

**Mr Harnick:** Not without tripling the size of the operation, and I have not seen anything in these amendments that indicates the Ontario Municipal Board will be receiving more money from the province; that it will have more court space available to hear these cases; that it will have more members on the tribunal; that the staff to process the objections will be increased; that the operation will be computerized so people will know the date their hearing is going on. I do not see any of that. I cannot see how you can bring this piece of legislation in such haste.

It is interesting, because when you look at what people have said about this legislation, they are opposed to it, with very few exceptions. I can even point to members of trade unions—not the union leaders but the trade union people, the people who do the work. What do they say? In families with at least one member who is a member of a trade union, over 70% of them are in favour of some kind of Sunday shopping. But what does this legislation do? Does it answer for those approximately 70% who want Sunday shopping? Does it answer whether we are going to have Sunday shopping or not? It does not answer those questions. It just says, “We’re going to give you Sunday shopping with a tourist exemption and we’re going to take it away with an objection by anybody from anywhere.”

**Mr Winninger:** You are losing your audience, Charles.

**Mr Harnick:** I have never spoken to such a big audience in this committee. This is the biggest audience I have ever had and I am just amazed at the interest this bill is provoking. It is interesting. We sat through the support and custody orders enforcement bill, the SCOE bill, earlier and I do not think we had an audience of one or two people, and that was a very important bill. But here we have more people than I have ever seen come to this committee, and we are not even in the middle of hearings, so the interest is there.

I know that all these people sitting here watching are wondering, “How come they told us we were going to have Sunday shopping with a tourist exemption?” and now they are saying, “How come they have brought all these amendments that say the tourist exemption is being eliminated?”—because everybody wants to know.

Everybody wants the government to go back and take this piece of legislation and start again and declare a position. Either it is for Sunday shopping, or it is against Sunday shopping. If you are for it, then bring us legislation that says you are for it, and if you are against it, bring us legislation that says you are against it. But to bring us this

hybrid is really not answering the question the public wants to hear.

The other thing that disturbs me—and I think it deserves the minister’s attention and it deserves some thought and time—is the fact that not only by these proposed amendments are you taking the tourist exemption away, but you also have the rules that provide the means to obtain the tourist exemption—the criteria, if you will, contained in the regulations, and the regulations can be changed by the cabinet without bringing amendments before the Legislature. So you really do not need all these amendments if you want that tourist exemption. If you find the tourist exemption does not work, sit around the cabinet and make the order in council, because you can amend the regulations without bringing it back to the Legislature.

I do not think that is right, because that is the pith and substance of this legislation. It is the tourist exemption. But surely, if the legislation says you can change the regulations by order in council, why do you have to confuse things with these amendments? If, after you try to work this legislation for a while and we see whether it is working, if it is not working, then by order in council change the regulations, because that is what the act says you can do. Why burden the Ontario Municipal Board? Why come up with an amendment such as subsection 1(1) of the bill, proposed, section 4.3 of the act, when you do not even have to do that? If you are going to bring amendments, bring ones that are sensible, that are not contradictory to the intent of the act, and then after you try the act for a while and see whether it is working, decide whether you are going to go back to the cabinet table and change it.

We lived with wide-open Sunday shopping for nine months and, with all due respect to the government, this legislation is not necessary, because after that nine-month trial period we learned that Sunday shopping was not the demon people made it out to be. Sunday shopping was accepted by the public almost universally.

In my constituency there was a period when the majority of my constituents were opposed to Sunday shopping, and they told me that. In my most recent newsletter I sent out a questionnaire and asked my constituents whether they were in favour of Sunday shopping. By a majority of about three to one, they indicated to me: “Boy, after the nine months of Sunday shopping, it was pretty good. We like it, we are in favour of it.”

So I do not see why the government is not prepared to try out its legislation, to try out its tourist exemption, and see if it works or not. If it does not work, then you can go by way of order in council and amend the regulations to change the criteria for the tourist exemption. But surely to bring these amendments that contradict the substance of the act you originally proposed, that has had second reading, is a backward step.

1610

The other option you have, and the other reason the Liberal motion makes a great deal of sense, is that you are now having municipal elections. If ever there was a time to canvass every community in this province to see how people really feel about Sunday shopping, why not do it in conjunction with the municipal elections? Why not put it on



the ballot—"Are you for it or are you against it?"—and let the public tell you what it wants to do?

The minister has the opportunity to do that. He can do that and he can look like a hero. He can look like a person who really consults the people—not bringing in the odd group to see him in his office, where all the bureaucrats are surrounding him. He could really take note of what the people say. This is an opportunity for the public to go ahead and tell the minister, "We don't like Sunday shopping," or "We do like Sunday shopping." Then the minister would know how to propose legislation.

If we defer this until January, we can avoid that. We can avoid the difficulties we are having. We can have a bill that reflects what the public of Ontario really wants, not a bill that tells us on one hand, "You can shop," and on the other hand, "If somebody objects, the whole system closes down."

There are a great many other issues that have to be canvassed as well. I think the minister would be, with great respect, well advised to canvass some of these issues, and I refer to cross-border shopping. How does this legislation we now have impact on Sunday shopping? Surely that is something the minister would want to know. Surely that is something that should be reflected in the piece of legislation that is proposed.

I know in this committee, because I was here when the fateful day came when we decided where we were going to have the hearings, that the members of the NDP government voted against going to the most obvious communities that were being hurt by cross-border shopping. They would not go to Sault Ste Marie. They would not go to Cornwall. That is very regrettable because those individuals from those communities had a message and that message had something to do with Sunday shopping. It was not going to cure all their problems but it certainly was going to help.

The fact they you did not go there is more reason to defer this legislation until January, so the minister himself and maybe members of this committee—maybe Mr Fletcher, so he could hear first hand—could go to some of the communities that the committee—and I am talking about the NDP members of the committee—chose deliberately to avoid because they did not want to hear the message of people.

The minister has the opportunity to listen to people now. He has only been the minister for a very short time. He has the opportunity to bring us his legislation, not the legislation of his predecessor that he has tried to patch up, and I admit with great effort and with great sincerity, by these amendments, but it cannot be done. The minister deserves to listen to people and hear people who might want to work on Sunday, because it gives them the opportunity for extra work, or perhaps for the only work they can get now during a recession.

I keep hearing Mr Laughren tell us in question period that the revenues for the next projected year are flat, yet he thinks he can reduce the deficit without raising taxes, in spite of the fact that revenues are going to be flat. I put it to the Solicitor General—and I really do appreciate that he is here today and I appreciate that he stayed—that if people

are working on Sundays they are earning income, and when they are earning income, they are paying taxes. If more people were working and paying taxes, the revenues in this province might not be flat in 1992. In fact, maybe we can avoid tax increases in 1992.

If we have more people shopping on Sundays, which they enjoyed doing during the nine-month period, they would be adding revenue to the government coffers because they would be paying sales tax. Therefore the revenues of this province might not be flat in 1992.

I urge the Solicitor General to convey to the NDP members on this committee to take a hard look at deferring this legislation until January 1992, because the minister can make this act better. He can make it better because he can have the opportunity to start again.

It is interesting to note that the NDP caucus has been deeply divided on the issue of Sunday shopping. We have heard the comments of people on this committee. We have seen Mr Kormos come and we have seen Mr Kormos go. What Mr Kormos says reflects what many members in the NDP caucus believe. I think Mr Morrow is a prime example, and he is now sitting in the Chairman's spot.

This package of amendments has essentially tried to satisfy everyone in the caucus. By trying to do that, it is trying to appeal to people who are very divided on the issue. It says on the one hand, "Shop," and it says on the other hand, "Don't shop."

You cannot leave the public with this legislation, minister. I ask you to please ask the NDP members on this committee to vote to defer this matter so that you can give us your piece of legislation, not your predecessor's piece of legislation which you have valiantly tried to save. You would be doing a great service to the people in Ontario if you did that.

The Liberal amendment is sensible. It is worth considering and it will have the effect of providing Ontario with decent Sunday shopping, be it option 1, which is the option of full Sunday shopping, or option 2, which is the option of no Sunday shopping. At least we would have a level playing field. I ask the NDP members to give their minister an opportunity to provide us with his piece of legislation that will be a better piece of legislation than what we have now.

**The Vice-Chair:** Thank you very much, Mr Harnick, for those thoughtful insights.

1620

**Mr Callahan:** I am just visiting here and this is like déjà vu. I chaired this committee and we went all around the province with that delightful man, Mel Swart, and heard all the presentations that I am sure you have heard.

The issue Mr. Harnick was dealing with was the question of deferring this until January 1992. I would like in this brief opportunity to say a few things about one item in the bill that concerns me gravely. We are almost going back to déjà vu of 1980 or so, or 1975, where the government of the day could designate whatever it wanted as a tourist establishment.

The public has to be aware that an order in council, as highfalutin as it sounds, is nothing more than cabinet making up its mind as to how something will be defined. The

government can change it at any time without its ever coming before the Legislature or ever being reviewed by any body that is elected and accountable. I found that out because I chaired the standing committee on regulations and private bills. My predecessor in that chair, David Fleet, and his committee, did an excellent report on regulations. I urge every member of the government to read it.

Regulations are called the silent laws of the province. It is ruling by edict. They are not seen by anybody. An order in council can be made in the back room of any place, in here or the back seat of a car or in an airplane, and it is called regulation, order in council, Lieutenant-Governor-approved. We have a marvellous Lieutenant Governor, but I think you would be the first one to agree he does not have anything to do with the definition of tourism.

Furthermore, an order in council is so available to be changed by anybody. If Mr Harnick is right that this bill represents the fingerprints or the footprints of many members of your caucus, each one trying to establish the belief his riding has in this legislation, then though everything in here may be fine and comprise a distillation of those various viewpoints, what in fact you have done is place in the hands of perhaps four people in the back office, two of whom are probably unelected, to decide by regulation at any time what a tourist establishment is. There is nothing in the legislation to define it. It can change with the wind.

If the four people in the back room decide, as they take a poll with one of the various polling groups, that the use of the tourist definition as it applied at one time is not popular, they can turn around and change the tourist definition. What do you do? You go back to your riding and you have egg all over your face. You have told them: "Here is what the definition is and it is going to work, I assure you. I have put my input into it." When next you get back to your riding, you find out that the four guys in the back room, two of whom are not elected, have made a decision to change that definition of tourism. What are you going to look like? You are going to look like a fool. This is one thing I find totally outrageous.

I can remember in my riding there was a fruit market that was very popular with the citizens. It kept getting charged because it stayed open on Sundays. So what did they do? They applied to the government of the day which, by the way, Mr Carr, was the Conservative government, and lo and behold it was declared a tourist attraction. It was no more a tourist attraction than the local BP station would be or the BF Goodrich tire company. I mean, it was absolute, ludicrous fiction.

I suggest you give that some very serious thought. You have gone around the province and spent thousands and thousands of dollars of taxpayers money to hear from the public on this bill. I was not on the committee, but I would be willing to bet that there is not one amendment in this bill, either this one or the proposed amendments, that reflects one word that you heard from your public hearings. If that is the case, what you have done is taken taxpayers' money at a time when it is very tough to come by and you have wasted it. You have thrown it away.

I remember that the former Solicitor General used to sit here with his duck during the Sunday shopping hearings and accuse us exactly of that.

Interjections.

**Mr Callahan:** That's right, it was a chicken.

**Interjection:** It looked like a duck.

**Mr Callahan:** In the final analysis, if you people want to really make a change around here—

Interjections.

**Mr Callahan:** This is like Hamlet. It is like a soliloquy, and none of the elected representatives is listening to me. I am trying to talk to you.

**Mr Mills:** I am listening. I am looking at you.

**Mr Callahan:** Thanks, Gord.

If you really want to make a change around here, make certain that a bill is referred after first reading, not second reading. When it is referred to the committee after second reading, in fact the principle is in place and we could all stay home. The public could stay home, we could stay home, because the decisions have all been made by the four or five people in the back room, and they will make them on the basis of what is politically expedient, not on the basis of what is going to work.

I am glad I did not have to go around the province on this committee this time because I do not think I could look the people in the face who came before us on the previous committee. I could not go back and justify to my constituents the amount of money—I do not know what the budget was. It must have been a big budget to travel this province and visit the major areas and have people come out panting and thinking, "Well, here are my elected representatives coming to hear from me," making them feel very important, and then as soon as they are gone, walking away and doing nothing about it. That is precisely what will happen.

I would be willing to bet that nobody can show me any amendments that have been suggested that came out of the public hearings. Would anybody dare do that? They are just façade.

**Mr Mills:** Let's get to it.

**Mr Callahan:** I would be interested in knowing what kind of money was spent on these public hearings and whether any of the people who came before this committee were actually listened to in terms of changing the legislation. That would be rather interesting. I think it would be something that could be sent back to all our constituents in our ridings. Are committees an anachronism? Do they in fact serve any purpose, or in fact are we just here to rubber-stamp what the government of the day decides will be the way we go? That, to me, is absolutely outrageous.

I think you had better check who the four people down in the back office are. Make sure at all times that they are well and up to snuff, because if you get people down there who get a little too egocentric or a little too powerful, pretty soon you may find the tourist definition will cover everything under the sun.

If you want to set up horse racing—well, I guess that is legitimate anyway on Sunday—but if you want to set up



something, think of the most outrageous thing, and it is popular or it happens to be someone that catches the eye of the four major horsemen in this province, it will become the definition and you will never know about it, believe it or not. You will not know about it. You will not see the regulation. You will have no idea that it was passed, but suddenly it will appear in the Gazette, which is something everybody subscribes to; it is such an interesting magazine. Obviously, you will be aware of what it is in the Gazette and you will know that.

The other thing I really like is the fact that you allow councils to make a decision that is final. Now, just think about this. Maybe this is unfair, and I am certainly not going to accuse any council of doing it, but let's say you are the local barber or the local real estate guy in town and the people in the council do not happen to like you and they decide that you are not going to—

Interjections.

**The Chair:** Could I call this meeting to order? The constant banter between the two parties is making it very difficult for the Chair to hear what is going on. I am sure the other people who are participating who would like to hear what is going on also are having a tough time following the conversation. Mr Callahan, you have the floor.

**Mr Callahan:** As I was saying, if some local merchant in your community, for some reason—maybe he put the wrong sign on his lawn during an election—finds the council does not like him, they can say no to a legitimate tourist operation, if that is the situation here, and that person has no appeal whatsoever. That to me smacks of what we just got rid of in Moscow. That smacks to me of a totally non-democratic approach. There is no accountability. It is simply a matter of whom I like and whom I do not like.

I will tell you something. One of the reasons for the Magna Carta was that the king of the day got just a little too uppity and made rules on the basis I guess of the length of the chancellor's foot. If there is one principle of law, it is that it has to be clear, definitive, and there should be accountability behind it. I am suggesting to you that in this piece of legislation that is one item that scares the daylights out of me. It leaves itself open to a number of other things, too. It leaves itself open to manipulation. It leaves itself open to pandering, cronyism, the whole bit. If that is what you guys are buying, then I find that really difficult.

1630

I know a lot of you and I have heard you speak in the House. It does not seem to me that is the type of principle that you want to buy, but you are buying it and you are buying it probably because you have been given your marching orders. I would love to be a fly on the wall in caucus. It is probably: "Well, you've got to support this bill because this bill is a major issue and it's got to be supported whether you like it or not. You go out there and smile and say nice things about it and don't object to it, because if you object to it you'll lose some of the benefits by not being a good boy, or a good man or woman."

I always thought the New Democratic Party stood for principles that were higher than that, but I guess I am wrong. Please prove me wrong by taking an independent

stand. Be a maverick. Look at Peter Kormos. Peter Kormos is standing up for his principles. At least the guy has got the guts to fight his own party on the basis of things that it has rejected. Are you going to go through the next four years, or the next eight years if you are lucky, and walk away from this place having said: "I did my job. I followed orders throughout"? If you do that, I will tell you something, it will be eight vacant years and you will have collected your salary, yes, but I think you are going to have to examine your conscience as to whether or not you collected it properly.

I suggest you look at these things. Do not just pass them willy-nilly. This is going to be a very significant piece of legislation if it is passed, and as for the impact it will have on this province and has already had—just think about it—you will be the creators of that. So you had better be able to hold your head up high, that you made independent decisions and you were not dragged around by the nose by the four people down in the corner on the second floor here. As I say, two of them are elected, two of them are not. Thank you very much.

**Mr Fletcher:** It is a pleasure to be here today. I agree with the member opposite when he said this is an important piece of legislation. It is an important piece of legislation that I think we should start moving on. We have already heard the ramblings of both opposition parties and we are wasting more taxpayers' money just sitting here flapping off about nothing instead of getting on with the piece of legislation.

This government has come in with a piece of legislation. We went around the province to hear what people had to say. Now we are bringing in amendments according to what the people said and according to our own conscience also. It is a good piece of legislation with good amendments. If we do not start moving on it, there is going to be uncertainty in the business sector. That is because of what is being held up here right now. The people in the business sector are not sure which way to go and what to do. If we can just get off this high horse and start moving with the legislation, instead of trying to block every piece of legislation that comes through, I think the province would be a lot better.

What are the opposition parties afraid of when we as the government of the day bring in a piece of legislation that greatly improves what has been there in the past? As far as I am concerned, it not only appeases people who have to work in this sector, it also appeases the people who are in the tourist area. I place a lot of confidence in the regulations that are going to be coming out because there has been a committee of the stakeholders set up, something the people were saying when we were on the road: "Set up a committee of stakeholders." That is what is being done.

I think it is time to stop meandering, stop blocking what we are trying to do in this committee and stop wasting taxpayers' money right now. Let's get on with this legislation.

**Mr Sorbara:** Let me thank the Chair for the opportunity to speak on the amendment that Mr Chiarelli moved to the motion originally put by Mr Morrow, who I guess is not with us now. Let me welcome once again members of the studio audience to this show.

It is good to see the Solicitor General here in particular. I know he is following the debate. Just to interject this one thought, we were not privileged to have the solicitors general, any of them, with us during our public hearings. Certainly the parliamentary assistant did a very commendable job representing the government during our public hearings, but notwithstanding his competence it is always good to have the minister around to hear the views of members of the committee directly, and even the views of the members of the public when we are holding public hearings.

I know the Solicitor General is very anxious to conclude consideration of this project. I can understand that. I had an opportunity during the previous Parliament to carry bills through clause-by-clause consideration, so I can understand the urgency that he feels in getting on with this and getting on after this with legislation that is perhaps urgent and pressing as well.

It was interesting today in the House that matters of policing were raised with the Solicitor General. I am not sure his answer to that question satisfied the questioner, but at least we had an opportunity to make the point during question period that the Solicitor General's responsibilities extend beyond trying to mould and warp some sort of bill to deal with the age-old question of what you can and cannot buy on Sunday in Ontario.

My remarks on this amendment moved by Mr Chiarelli will deal with certain concerns that I have about proceeding with the amendments of the government at this time. As you recall, Mr Chiarelli suggested in his amendment that we put off clause-by-clause consideration of Bill 115 until such time after January that this committee has had an opportunity to hear from, among others, the chair of the Ontario Municipal Board, the Attorney General, the Deputy Attorney General and a number of others.

By way of preface, and dealing for a moment with the amendments moved by the government, I for one would like to have an opportunity to hear from the Attorney General and the Deputy Attorney General because I have a grave concern about the substantive amendments put forward by the government in respect of this bill. In fact, I think an argument can be made—and I would want to question the Attorney General and the Deputy Attorney General directly on this; I know my friend Mr Callahan would be interested in this—that the amendments put forward by the government are indeed unconstitutional.

Let me just explain the basis of the arguments that I would make in that regard. I draw your attention to the substantive amendment providing for an appeal to the Ontario Municipal Board. This appeal, which is going to be moved one day by the government members, unless they change their minds—and I hope they do—provides that any person who objects to a bylaw made by the council of a municipality under section 4 may appeal to the Ontario Municipal Board by filing a notice of appeal with the board setting out the objection to the bylaw and the reasons in support of the objection. Now, understand what that section means.

**Mr Callahan:** Section 93 judgement?

**Mr Sorbara:** It is not a section 93 judgement.

Understand what that section says. It says that if a person, any person, within or without the municipality objects to the passage of a bylaw, that person may appeal to the Ontario Municipal Board. That is, that person has a right to go before another quasi-judicial body—because in this case a municipal council acts as a quasi-judicial body—may go to a higher quasi-judicial body to appeal the making of that bylaw.

I tell the Solicitor General that the making of a bylaw under his own bill grants a right to a shopkeeper to open his or her store—or its store, in the case of a corporation—on Sunday. So let's follow it right from the beginning. A store is not allowed to open on Sunday. The storekeeper thinks he comes within the four corners of Bill 115 and is able to bring an application under the so-called exemption before municipal council for an empowering bylaw to open a store on Sunday. A shopkeeper, can make his arguments before the council and the council can decide in its own discretion whether or not to pass a bylaw and therefore grant the right, in the retail sector, to sell out of his store on Sunday.

**1640**

Once that bylaw has been made empowering the storekeeper to open his store on Sunday, any person can appeal, and on any basis really. It is not a tourist facility; it is a tourist facility but we do not need another of that kind open on Sunday; it is a tourist facility and we might need one of those but it violates the principle—in your bill, sir—of a common pause day and therefore ought not to be made, and on and on. There are a number of reasons and legal bases for appealing the making of the bylaw. That is okay. You can put that in if you want to, the legal right to appeal the making of a bylaw granting or empowering a storekeeper to open on Sunday.

The reason I believe this provision is unconstitutional is that it does not grant to the storekeeper the right to appeal to the same quasi-judicial body, the Ontario Municipal Board, if the storekeeper is not granted the right to open on Sunday by the failure or refusal of the council to make the bylaw. Does the committee see what I mean? Does the Solicitor General see what I mean? It is a contest before the municipal council as to whether or not the storekeeper can open on Sunday.

By your bill, I tell the Solicitor General, the municipal council has to hold a public hearing and hear all points of view. If it grants to the storekeeper the right to open on Sunday, anyone who is aggrieved, whether or not that person lives in the municipality, whether or not that person is a competitor, whether or not that person is simply aggrieved by the fact that another store is going to be open, any person can appeal, but the opposite is not the case.

If, after the public hearing and the decision by the council, the council says, "Sorry, we do not think we need another of those trinket shops open in our quiet community on Sunday," the shopkeeper does not have the right to appeal. The shopkeeper cannot take his case to the OMB to argue that he comes within the four corners of the act, that he is a tourist facility, that there are no other tourist facilities of the kind and that this does not violate the principle of a common pause day. How can you do that?



How can you vest in one party the right to appeal and not vest in the other party the right to appeal? Surely the balance is wrong. Surely our Charter of Rights and Freedoms says that we give all people involved in a judicial process the same set of rights.

You have made a mistake. If you have not made a mistake, let's get the Attorney General and the Deputy Attorney General here to answer the questions about the fairness and the legality. My friend Mr Fletcher agrees, and therefore he agrees with the motion of Mr Chiarelli that we hear from the Deputy Attorney General and the Attorney General. You cannot do this, I tell the Solicitor General. You have to balance the rights.

A storekeeper denied the opportunity to make his case fairly in front of the OMB does not have the same rights as someone who might simply be a competitor who does not want a competing business to open on Sunday. Does that seem fair? Does it seem right? Does it appear to you that only one side should have recourse to the courts?

I remind the Solicitor General that the OMB, as a quasi-judicial body, is susceptible to judicial review. If the appealing party is not satisfied with the question of law upon which the OMB makes its decision, it can go to the courts, the Ontario Court and then the Court of Appeal and then the Supreme Court of Canada. The poor storekeeper, five years later, is going to find out whether or not the bylaw is valid.

But if the city council says: "Sorry, we don't like your kind, you're going to screw up the common pause day. No right of appeal."

**Mr Callahan:** "You are an outsider."

**Mr Sorbara:** "You're an outsider. Your drugstore is too big."

**Mr Callahan:** "The sign on your lawn is the wrong one."

**Mr Sorbara:** "The sign on your lawn is the wrong one." I quote my friend the member for Brampton South. I see legal counsel is here from the ministry and I will want an answer to that question, because the balance here is wrong. Our charter says everyone shall have equal access under the law.

Surely in the competition for the Sunday retailing business, you would not want to deny the shopkeeper the right of appeal that the Family Coalition Party or the Lord's Day Alliance will have to close the store down. Look at what is going to happen. The opponents of any Sunday shopping are going to raise money to launch appeals and they are going to do very well. They are going to finance this thing on the basis that they alone have been charged with the responsibility to end this terrible family-destroying practice of buying toaster ovens on Sunday.

All I can tell the Solicitor General is to give the same right to the storekeeper, to think about that. We are going to get on with clause-by-clause consideration of this bill, but we are not going to get on to it until the Solicitor General has had that final opportunity to go over the material once again and bring a package of amendments that shows just some small ability to listen.

I want to get on to another amendment proposed by the government. This is a matter that I think is completely out of order for consideration by this committee. I speak of the amendment proposed which allows an interested person to make an application to the Ontario Court (General Division) seeking an order "that a retail business establishment close on a holiday to ensure compliance with this act or a bylaw or regulation under this act." I am quoting there from a draft of the proposed government amendment.

Separate and apart from the substance of this, and I will speak to that in a moment, I look to the clerk, I look to the Chair, I look to the committee to confirm with me that this little baby is out of order. It is inappropriate. Why in the world is the government bringing amendments that are out of order? Why is it out of order, Mr Chairman? It is out of order because it amends a section of the act which is not before us in Bill 115.

Now, I realize that sometimes a committee, always with unanimous consent, can consider an amendment which otherwise would be out of order. But surely to goodness in the interests of camaraderie and fellowship and the fair working of this committee, my friend Mr Morrow, the member for—

**Mr Morrow:** Wentworth East, my friend.

**Mr Sorbara:** —Wentworth East, in the great regional municipality of Hamilton-Wentworth, would have picked up the phone and said to me, as the whip for the official opposition, or perhaps to Mr Carr, the member for Oakville South, as the whip for the third party: "We are proposing an amendment that is illegal and out of order. Do you mind at least if we put it on the table?" No phone calls. They do not fax, they do not write, they do not phone, they do not visit us during question period. Nothing. We do not hear from them. I would like to hear that they are interested in putting forward amendments that are entirely out of order, given the four corners, the parameters of Bill 115.

1650

We are not going to allow this to go forward, and do you know why? Because once again, I tell my friend Mrs Mathyssen, the member for Middlesex, this amendment takes sides because it invites the squawkers who can raise the money to hassle storekeepers who are open on Sunday simply for the purpose of trying to stay alive. These businesses are not open on Sunday or any other day to gouge the public. It is life and death out there. It is tough to survive. It is not as if profits are diminishing; there are no profits. People are trying to minimize losses and sometimes they realize they might be able to do that by opening up their stores to willing customers anxious to buy toaster ovens and other things on Sunday.

So what does the government do after weeks of public hearings? It does nothing to respond to the hours and hours of testimony we heard that this bill is no good. It brings forward two substantive amendments—three actually. I will speak to the third one in a moment. Of the first two amendments, one violates the Charter of Rights and Freedoms, I believe, because it grants judicial process to one party and not the other in order to hassle storekeepers who have successfully convinced the council to pass a bylaw,

while the other is completely outside the four corners of the bill and once again invites people to hassle storekeepers.

Let me just tell my friends on the committee how bad this bill is. I show them a copy of page A19 of the *Toronto Star* dated today. I show them what amounts to, if you paste and cut, a half-page ad. This is very expensive material. It costs a lot of money to advertise in the *Toronto Star*. "Now that's a newspaper." People do not advertise in the *Toronto Star* with advocacy advertising simply to take up space that otherwise would be filled with editorial comments. They advertise because there are important issues at stake.

I beg the committee's indulgence simply to read the ad. It is an open letter to—guess who?—Premier Bob Rae, who was not in the House today, by the way, not in the House all last week, is rarely seen around Queen's Park.

**Mr Morrow:** On a point of order, Mr Chairman: What does that have to do with this amendment, whether the Premier was in the House? Or whether the opposition leader was there or not, because he was not there either.

**Mr Sorbara:** I can answer that, sir, if you give me a moment.

**The Chair:** Order, please. Mr Sorbara has the floor on the amendment.

**Mr Sorbara:** This is an open letter to Premier Bob Rae and the title over the letter says, "Committed to creating jobs for Ontario?" It is on the letterhead of the Ontario Discount Drug Association, representing 3,000 Ontario workers.

"Dear Premier Rae:

"You keep saying that you and your government are committed to creating jobs in Ontario, which will provide the foundation for this province's economic renewal. As recently as September 23, you stated, 'Job creation is the key priority for this government.'

"Why then are you prepared to throw away 3,000 jobs?

"Our member stores will be unable to compete and 3,000 more jobs will be lost in Ontario, if the arbitrary size restriction for drugstores in the Retail Business and Holidays Act is not removed. This is not a bluff. It is a fact. The financial data to support this claim has been provided to the government's standing committee on administration of justice—that is us—"which is now considering amendments to this act."

I remember that testimony, I tell you parenthetically.

"We don't dispute your government's intention to have a common pause day. However, the current size limit restricting the public's access to drugstores under 7,500 square feet on Sundays is unrealistic in today's competitive discount environment:

"It denies the public access to discount drugstores whose average prices for all goods and services are 20% to 40% less than those of conventional drugstores.

"It denies our student employees, and others needing this income, the right to work on Sunday. These are people performing the identical tasks to the employees of conventional drugstores smaller than 7,500 square feet.

"It forces all those who normally shop at discount drugstores to use large multinational corporations like Shoppers Drug Mart and Pharma Plus on Sunday.

"Your government says it believes our claims, yet no one is prepared to act." I say parenthetically, sir, that we on this committee, or some members of this committee, would be prepared to act.

"Why should a drugstore of less than 7,500 square feet be allowed to operate on Sunday when larger drugstores, selling the same products, are restricted from operating?

"Why is the common pause day being applied to what amounts to only 3% of Ontario drugstores in Ontario?

"Our workers are no less important than others employed in Ontario. We appeal to you to remove this arbitrary and unfair restriction being imposed on large discount drugstores. If not, we will be forced to close our doors, permanently."

It is signed by three members of the Ontario Discount Drug Association. Those members came and spoke to this committee.

I read this into the record simply because I think it is very serious. I believe these drugstores are operating right at the brink of bankruptcy. The reason is that under our laws, and, I confess, one passed by the government I was a part of, there is a requirement that certain drugstores larger than 7,500 square feet have to operate notionally 10 months a year and compete with other drugstores that notionally operate 12 months a year. No, I correct myself, not notionally.

**Mr Harnick:** In fact.

**Mr Sorbara:** In fact 12 months a year. There are 57 days out of a 365-day year in which these larger drugstores are prohibited from competing. They are selling the same products. They are competing in the same marketplace. It is not fair. They are going to go under. If the members of this committee want to close down all the drugstores, so be it. I do not think it is what the public wants, but surely to God we want to be fair. Fairness is the hallmark of not just the New Democratic Party—

**Mr Morrow:** We always claimed you were fair.

**Mr Sorbara:** —but of every party. We all stand up on the hustings and talk about a fairer society and a society where justice characterizes what we do. We are talking about a little amendment. We are talking about a little bit of time for the government to have just a little bit more opportunity in order that we pass laws in this committee that we are proud of.

I confess to you that we got it wrong in respect of drugstores. We passed it. You guys could correct it. You would not even have to backtrack on where you were. You could just put out a press release saying, "We're correcting one more of the mistakes that the old Liberal government made."

**Mrs Mathysen:** It is going to take years.

**Mr Curling:** That is all right.

**Mr Sorbara:** The good news, Mrs Mathysen, is that you guys will not have years to do it.

**Mr Callahan:** You had better work nights, work all day and night.

1700

**Mr Sorbara:** I expect that these proceedings could go a number of ways. I might go back to my office right now and the Solicitor General would phone and say, "I think we



are just coming to see that certain amendments to this bill that do not damage the common pause day—now don't deal with that, we won't damage that—are possible and we would like to discuss them with you”—the royal “we”; ministers are allowed to use the royal “we.” I would say, “We will be over to see you presently,” and then we would go over to see them. I use the royal “them.”

We would enter a real debate, not the debate that is going on here. With the debate that is going on here, we are simply serving the government and allowing it more time to take into consideration the wishes of the people and those who are really affected by its decisions. The darned thing about life in this building is that sometimes we do not realize that what we do affects the lives of real people.

I just mentioned, in reading this open letter into the record, a number of business people who are attempting to survive in a very competitive market. There is nothing more competitive than the drugstore market in Ontario. That is good for us. That competition keeps prices down and has the best interests of the consumer right at the centre of the experience. But for God's sake let's be fair.

Let's think about another piece of fairness. Let's think about the possibility, I say to the now absent Solicitor General, but I know he reads Hansard every night before he goes to bed—

**Mr Morrow:** That is unfair.

**Mr Sorbara:** I just point out, I say to my friend from Wentworth East, that the Solicitor General was kind enough to stay for the eloquent remarks of my friend the member for Willowdale and my friend the member for Brampton South, but I guess he had heard mine before so it was time to go. I do not mind, because I am just trying to serve him as best I can.

Interjections.

**Mr Sorbara:** I was saying that the Solicitor General has left. I do recall, though, that he was sitting here to hear my substantive concerns about the amendments that were passed.

I do have one more comment to make about the third substantive amendment. I think it supports Mr Chiarelli's motion to adjourn this thing until January. That gives the minister time to consider. He is new to his job, so he should have that additional time.

The other amendment simply makes it more costly to violate the act. You will notice that the fines have been changed from what they were in the original proposal, that is, \$500 for a first offence and \$2,000 for every subsequent offence. The amendments the government is going to propose keep that same arrangement but add a third level of fine, that is, \$5,000 for third and subsequent offences.

Boy, oh boy, you want to put it to them. You want to put it to the small shopkeeper.

**Mr Winninger:** There are too many of them.

**Mr Sorbara:** My friend Mr Winninger puts on the record “too many of them.” Too many small shopkeepers, I ask him?

**Mr Curling:** No, lawyers. They will make a lot of money out of this bill.

Interjections.

**Mr Sorbara:** My friend the member for Willowdale points out that lawyers do work Sundays. That, of course, is true. I do not want to get into the argument as to whether or not there are too many lawyers. That is for another day and another time. But I could say something about the failure of the chief lawyer in the province, the Attorney General, to make an announcement in the Legislature today about building new courtrooms. I could talk at length about the fact that there is a new course of conduct by the government to simply make all of its announcements outside the Legislature. For what purpose? To avoid the five minutes that we have to comment. What a cowardly act of a government that lost courage the day after it was sworn in.

**Mr Morrow:** Mr Chairman—

**Mr Sorbara:** I just say to Mr Morrow, for goodness' sake. Are you prepared to move a motion to adjourn?

**Mr Morrow:** Yes.

**Mr Sorbara:** We have agreement.

**Mr Fletcher:** We are ready to do the work on this bill that has to be done.

**Mr Sorbara:** I will defer to anyone who wants to make a motion to adjourn.

**The Chair:** Mr Sorbara, to the amendment.

**Mr Fletcher:** You can waste all the time you want to.

**Mr Curling:** He is a properly elected individual speaking on behalf of his people.

**Mr Callahan:** We have another hour or two. You do not want to waste taxpayers' money by adjourning now, do you?

**Mr Fletcher:** Let's go.

**The Chair:** Order please, Mr Callahan. Mr Sorbara, you have the floor.

**Mr Sorbara:** I am going to keep the rest of my comments very brief because I will have more to say on this amendment of Mr Chiarelli to the motion of Mr Morrow when we meet again. Those remarks could be long or they could be short, depending on whether or not the phone rings and it is the Solicitor General.

**Mrs Mathyssen:** Or your campaign manager.

**The Chair:** Are you finished?

**Mr Sorbara:** No, I am not finished yet. I want to advise the committee that when we return next week, when the studio audience joins us again for the continuing saga of Bill 115 and the anti-Sunday shopping-forces, I will be talking about Mr Martin Herzog, who has thus far paid \$10,000 in fines for keeping his little music store open. The guy is going broke, and you want to raise the fine to \$5,000, so that every time he goes into court on the third and subsequent offences, he can put another \$5,000 into the coffers of the consolidated revenue fund.

Do you want to know something? We let the bookstores stay open. You can read on Sunday. Good, literacy is important. We let the video stores stay open. Good, you can get pornographic movies to your heart's content.

But the people in this government, fairmindedly—I hope they change their minds—will not yet allow someone who wants to sell a recording of Beethoven or Bach, or Bachman Turner Overdrive, depending on your taste—

**Mr Curling:** Or Bob Marley.

**Mr Sorbara:** What about Bob Marley, I say to my friend from Scarborough North? You can read, you can watch, but you cannot listen. Is it fair? This guy has paid \$10,000 in fines.

**Mr Harnick:** He is from Willowdale.

**Mr Sorbara:** He is from Willowdale. He came from Willowdale to my constituency office in Maple a few weeks ago to say: "Please help me. I am going under with fines. I cannot afford to close." Do you know why he cannot afford to close? Because the video store three stores down, which is renting videos, is also selling CDs and audiotapes. He can do that legally, that is okay. You have your selection of pornographic movies, so that gives you the right to stay open, but you cannot sell a little Beethoven.

**Mr Fletcher:** Do you have an amendment on that?

**Mr Sorbara:** I have an amendment on that. It is in your package. My God, if the government, in considering a number of amendments not yet tabled by them, does that, that would be great. That would be just wonderful.

**Mr Fletcher:** Let's try it.

**Mr Sorbara:** The next time we get together after the phone has rung and it is the Solicitor General and he is prepared to do a few things—

**Mr Fletcher:** We can do it.

**Mr Sorbara:** I am going to conclude my remarks by saying that I will be talking on that next time we get together. I will be talking about the possibility of perhaps allowing the stores to stay open indiscriminately during the months of November and December. That would be a good idea.

I am not going to argue any more that the government simply abandon its determination to have this common pause day because it is not a common pause day at all. It affects maybe 40,000 workers. I am not going to go on at length when we get back to that, but I will be talking about Mr Herzog. I will be talking about the charter, because this is very serious, I say to the parliamentary assistant. Think about that please. We have from now until next Monday to deal with that.

That problem with the appeal is very serious. You are going to have to abandon, because you are not going to get unanimous consent on the Ontario Court thing. Forget that.

Think about just a few other things. We are close here. I want to say that there will be no press releases saying we have willed you down if you come forward with different amendments. We will just say this debate is going to rapidly come to a conclusion, and it will, it really will. We just need a few changes. We just need a little bit of fairness. We just need a little bit of reason. We need to say to you that you are going to eliminate the old injustice, perpetrated by the Liberal government to the larger drugstore owners. We just want that. If we can get that from you, we will be out of here through clause-by-clause faster than you can say, "Let's adjourn." Those are my remarks for right now, sir.

1710

**Mr Callahan:** Very briefly, because I am leaving with people and will not be back—I do not hear any applause—the thing that really concerns me about this bill is the fact that my recollection was that when we went around the province on the Liberal bill, Mr Farnan was dead set against it. He would say, "We want a common pause day."

As my colleague Mr Sorbara said, this is not a common pause day; this is an attempt to ride two horses. It is an attempt to placate the people whom you promised should have a common pause day, and to do it by very artificial means. It is also a combination of what Mr Farnan ranted against, which was giving municipalities, duly elected people, the right to determine whether or not a store should open on valid grounds, not on this airy-fairy tourism kick that is made by the four guys in the back room and changed any time they want to change it. Really, what you are doing is deceiving those people to whom you promised a common pause day. You are not accomplishing that at all.

On the other side of the coin, you are speaking out of the other side of your mouths. You were not here, and I cannot blame you people for it, but Mr Farnan sat here and complained about us giving it to the municipalities to make the decision. In fact, as the natives of this country would say, "You are speaking with forked tongue," you are speaking out of both sides of your mouth. You are trying to create an illusion that there will be a common pause day, and there may very well be a common pause day in some areas of this province where municipalities decide, "We will just reject every one of these applications as they come forward," or, "We will allow all of them."

The interesting thing is, if they allow all of them, who is going to bring the application to the Ontario Municipal Board? Will it be the NDP government? Will it be the minister, the Solicitor General, who will file an application to the OMB against this improper allocation of a tourist exemption? Do you really think that is going to happen? I suppose it will take public pressure to get the Solicitor General to do it. If he does not do it, who is going to do it?

Even looking at some of the amendments, they use words in one of the motions about how, "The board may, if it is of the opinion that the objection to the bylaw set out in the notice of appeal is insufficient, dismiss the appeal." That is "may"; it does not even use "shall." "Is insufficient," and what does "insufficient" mean?

The government has sent us a directive. We will probably get some of these policy directives that are becoming more and more popular. In the Conservative days, they had this policy thing they could send down to the OMB, and the OMB clammed up. It did not say any more about a particular issue. Your government is doing the same thing through policy statements to Ontario Hydro. They can, in fact, have Hydro do something, or allocate moneys for a particular thing. I am suggesting to you that if it is "insufficient," what does "insufficient" mean? The wording itself is so loosey-goosey that you are going to create a field day for lawyers or paralegals. They are going to make a fortune.

Finally, before I go, and I am probably repeating what I wanted to say, I think it is a sham when you tell people—



you have good people coming here, and I have seen people here today whom I saw at the committee hearings when I chaired the committee, who come here truly believing there should be a common pause day. That is a question that you are not addressing.

Those people believe that Sunday is a day for family, even though today I would find it difficult to believe that children staying at home and trying to get their father's attention while he is watching football or one of the other sports is really a family get-together. I do not really think it is. I find people in my community who go out to the flea markets, which were in place even before legislation, and find that more of a family outing.

In any event, these people believe that we are fracturing the family unit. Unfortunately, we let the family be fractured many years ago without any complaint. It is a little late for us to be able to do that as long as the hours are geared in such a way that people can attend the church or religious ceremony of their choice.

You have in fact misled these people. They have travelled around the province, they have come to these hearings, and they think: "Here is the NDP. They are going to be our saviours. They are going to give us a common pause day," and you have given them nothing of the kind. To me that is a sham, because I think if there is one thing that people expect of their elected officials—and we learned it in the last election—people do not like to hear things being said that are not necessarily straight up front. I think you people have to understand that. You may think you are fooling the people, but you are not.

On the other side of the coin, you are going to create such chaos in terms of the business community. You are going to give such power to municipal councils, which can just stay silent in terms of whether they want it or they do not. You are getting, as Mr Sorbara said, the right of appeal for the people who object but nothing for the person who has applied. If that is the way you want to have your government remembered in terms of a matter of fairness, then Godspeed. I feel sorry for you, because in fact what you are doing is creating a sham.

That is really all I have to say. It has been nice being here with you.

**Mr Morrow:** Before I move a motion, there are a few things I would like to say.

I would like to thank the people who have been sitting here for days while we debate my original motion and the amendment to my original motion.

Gary Carr could not be here this afternoon. Gary Carr had another important engagement and could not be here to hear the rest of this, so at this time, with Mr Sorbara's indulgence—and hopefully Tuesday we can move on to clause-by-clause—by mutual agreement of all three parties I move that we adjourn.

**The Chair:** Mr Morrow moves the adjournment of the committee. The motion to adjourn is not debatable. All those in favour? Those opposed?

Motion agreed to.

The committee adjourned at 1717.

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Tuesday 8 October 1991

**Retail Business Establishments Statute Law Amendment Act, 1991, Bill 115 / Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail, projet de loi 115 . . . . . J-1491**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** Cooper, Mike (Kitchener-Wilmot NDP)

**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)

Carter, Jenny (Peterborough NDP)

Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathyssen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Winninger, David (London South NDP)

**Substitution:** Callahan, Robert V. (Brampton South L) for Mr Poirier

**Also taking part:** Curling, Alvin (Scarborough North L)

**Clerk:** Freedman, Lisa

**Staff:** Beecroft, Doug, Research Officer, Legislative Research Service





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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 15 October 1991

# Journal des débats (Hansard)

Le mardi 15 octobre 1991

## Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Tuesday 15 October 1991**

The committee met at 1610 in room 228.

RETAIL BUSINESS ESTABLISHMENTS  
STATUTE LAW AMENDMENT ACT, 1991

LOI DE 1991 MODIFIANT DES LOIS  
EN CE QUI CONCERNE LES ÉTABLISSEMENTS  
DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Reprise de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**Mr Morrow:** Mr Chairman, I just want to report to all those present that we have a mutual agreement by all three parties to adjourn at this point if we can.

**The Chair:** We will adjourn until next Monday.

The committee adjourned at 1611.

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Tuesday 15 October 1991

**Retail Business Establishments Statute Law Amendment Act, 1991, Bill 115 / Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail, projet de loi 115 . . . . . J-1505**

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Monday 21 October 1991

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Retail Business Establishments  
Statute Law Amendment Act, 1991

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Première session, 35<sup>e</sup> législature

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Le lundi 21 octobre 1991

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Avec le nouveau système, la numérotation commencée en janvier 1991 s'arrêtera à la dernière séance de la Chambre et des comités de l'actuelle première session. Une nouvelle série commencera le jour de l'ouverture de la deuxième session et des sessions suivantes : numéro 1, page 1. Les rapports des comités seront également numérotés à partir de la première séance de chaque comité pour une session parlementaire donnée.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 21 October 1991

The committee met at 1548 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** I call the committee to order. We are resuming debate on Mr Chiarelli's amendment to the main motion.

**Mr Harnick:** I at least initially had been led to believe we were adjourning this session. I was then told we were not adjourning this session. We have had some discussions and I have now made a proposal. Is there some idea we are going to continue debating the motion? I am asking Mr Morrow.

**Mr Morrow:** As far as I can see, we have a lot of people here who have been waiting for this to proceed. I suggest we debate my motion, as we have wasted the taxpayers' money for far too long.

**Mr Winninger:** Not "we"; not us.

**Mr Morrow:** Not us.

**The Chair:** On the amendment, not the motion.

**Mr Curling:** I ask that we have an adjournment for 20 minutes, because Mr Sorbara is not here. He is the whip of this committee. I ask that we move an adjournment and come back and decide what we will do after that.

**The Chair:** The motion is for a 20-minute recess. All in favour? Opposed? Okay, we will recess for 20 minutes.

The committee recessed at 1551.

1608

**The Chair:** I would like to call this committee back to order. We are resuming debate on Mr Chiarelli's amendment to Mr Morrow's motion.

**Mr Sorbara:** Who had the floor when we last adjourned? Was it months ago, or when?

**The Chair:** Nobody had the floor at adjournment last time.

**Mr Sorbara:** May I make a few comments as the whip on this committee? I think we have had some good preliminary remarks apropos of the amendment to the motion moved by Mr Chiarelli. That was an amendment, as I recall, to the motion of Mr Morrow.

Today, on behalf of my party, my colleague the member for Scarborough North, Mr Curling, is going to be making a few remarks. If I am not wrong, my colleague the member for Prescott and Russell, Mr Poirier, will be making some remarks as well. I certainly have a number of comments to make on the amendment, which I should tell you we support in general terms, although there are specifics—as and when we get to the main motion in the weeks to come, I will have something to say about that, probably at some greater length.

In the interim, I hope my good friend the Solicitor General is doing the work he is required to do and even attending here, which is also good to see. It is rare that a minister has so little to do that he can sit and listen to us go on about amendments to amendments. Suffice it to say that I have found the Solicitor General generally co-operative in discussing the bill. This is the first time I have had a minister actually pick up the phone and call and say, "We understand where you're coming from," and I encourage him to continue in that regard.

My hope and expectation is that by the time we are finished dealing with this bill the government can have the common pause day it wants, but we can have reshaped this bill to take into consideration the problems that larger drugstores are facing, the problems that certain facilities like music stores are facing. There are a number of other issues I hope the government members will agree to support us on, and of course the question of shopping during the Christmas period we have raised before.

Without any further ado, just by way of anticipation, I can tell you that I will be speaking on a number of those subjects in the course of this debate, but I would now cede the floor to my good friend and colleague the member for Scarborough North, if that is in order.

**The Chair:** It is fully in order.

**Mr Curling:** I want to thank my colleague the whip for giving me this opportunity. We work so very closely together to make sure the voice of Ontario is heard. As a matter of fact, it is extremely important that this happen, because far too often presentations are made and we seem to exclude some of the extremely important parts of the province. I do not know how many of you have visited Scarborough North, but it is a microcosm of what Ontario and Canada are all about.

I want also to commend the minister for being here. I say that rather sincerely. I know my colleague made some remarks about it, but I know he also appreciates the fact that the minister will attend committee meetings and, as the minister indicated to me, will be here for clause-by-clause. I recall this because when under Bill 51 I was carrying rent review, I went around to hear the people who are specifically affected by the bill; they had their input

and I heard it at first hand. So I want to say to the minister that his being here today is an indication of his commitment.

I do not know how much his party will allow him to make the changes as we hear the feelings and the interest and the concerns of the people across this province, but I am somehow confident that the will of the people will prevail on this, because it was the attitude of that party in opposition that it spoke for the will of the people, so that they could be heard. Speaking to this amendment, while on the one hand I am confident that the will of the people will prevail, I am not quite sure if the members in that party are allowed to make the will of the people prevail, because often people are shut out from making presentations. Even elected members of the House were shut out from participating and giving their contribution. So I hope this is a turning point, that he will listen to those people.

I also want, as you said, Mr Chair, to speak directly to the amendment put forward by my colleague Mr Chiarelli. I speak in strong support that this matter should be put forward to a later date after we hear from the people. The previous comments I made support that view. It is a very important issue, extremely important; it goes to the core of the economic situation today in this province. It affects people in the way they live their social lives.

While I commend the government for looking at a common pause day, we cannot arbitrarily have the state dictating to us what day it should be. "You all should have Sunday as your common pause day." People's lives, culture, behaviour are completely different. Your honourable member Mr Kormos expresses different views sometimes from the mass of the so-called social democrats in your party, and it is healthy that he speaks out. In the same way, when we talk about having a common day, we have to hear from people.

What would be a common pause day for you may not be the same common pause day for the other, and if we stop listening, then we stop governing. You cannot govern—you can be a government of dictatorship. You dictate. The state will tell you when to pause, the state will tell you when to worship, and that is not the way we have seen Canada. That is not the way of many people who have come and talked about the Canada of a gentler society, a gentler society because people listen to others and they respect each other, knowing the differences.

The fact is that once you start to tamper with that aspect of it, people fear what else you are going to interfere with. People are wondering then if this government is going to tell them that Sunday is this common pause day.

Let me just carry this a little bit further. We have some religious groups who do not see Sunday as their common pause day. They worship on another day. They then by the state would have a common pause day and by their religious belief would have another pause day, so they will be faced with two pause days. What will happen then? They will either decide to lose the day of work and lose economically, because today, as we say, every penny counts. As a matter of fact, even when we are counting pennies these days, they do not add up to anything. You see them all over the place and people do not pick them up any more in the streets. Their value is nothing.

However, you and your party have stated very well the economic situation by saying we are in a recession. It took you a few weeks to realize that, but you did realize that. You also went forward in the area of having a budget. You have a deficit of \$9.7 billion. I am not against deficits, I am just against how we spend the money, because we find there are people who could be helped in this process in a time of need, and here we are now penalizing people in a way. It is a matter of penalty to penalize someone by selecting a common pause day on a day he cannot take that economically would be disastrous to him.

We have to be very sensitive. We have to be extremely sensitive in the things we are doing. An issue I want to address is that this thing needs to be aired more and discussed more. The minister himself could then go back to his cabinet colleagues and say: "Listen, we're having a lot of problems with this bill, because what happened? We have not given enough time to think about it sensibly."

I heard my colleague Mr Sorbara, who spoke the other day, as you know, Mr Chairman, since you were here, and every member was bowing his head in agreement at some of the hurdles and impediments that were there. I hope I was not reading them wrong, because they were saying, "Yes, there are implications to this direction that could cause really severe problems."

Even the structure of how you are going to deal with cases is in question. In the House daily we hear about the courts that have been blocked by the tremendous amount of cases to be heard, and of course one way of resolving this is to pardon the 7,000 cases that do not come before the courts and to ease that burden there.

The reason I raised the courts is that even in the Ontario Human Rights Commission we talk about backlog. We are backlogged in the courts, we have a backlog with human rights, and it is not just because there are a lot of cases. The reason even the human rights cases are backlogged is because of the complexity of our society today. The cases are more complex. They are not standard cases we are going to hear day to day. We are having the homosexuals who have stated that their cases have to be heard and have to be addressed in a specific way. You have heard about the concerns of the disabled that have to be heard. As society develops, we have to make sure that these issues are heard in a singular form and not on a general basis.

1620

**Mr Winninger:** I think you are a little off topic.

**Mr Mills:** This is very simple.

**Mr Curling:** It is not simple because they felt that, "Here is a very simple thing to do. Let's put all those cases in the Ontario Municipal Board now to be dealt with." I am sure the minister is quite aware of the tremendous backlog that is there. People are waiting to have their cases heard and for various things. Now we are going to put all these to the OMB to be heard. I do not think they have enough of a sense of it. I do not think they have researched it properly, and I know, as the Chairman, you will take all those things into consideration to say, "Wait a second before we hurry this thing through."



Because at one stage they felt, "Yes, we should do that." A motion was passed, and the honourable member who is not here now, Mr Morrow, had moved the motion to proceed with this as a matter of fact. After the government of the day had put it on hold, then they realized: "My golly, Christmas is coming. We should do something." So they made the motion to move it forward.

We are saying to them: "Don't try to do this in a hurry. You have an opportunity now to have it done properly." That is why my colleague Mr Chiarelli has put it forward, saying, "Let's think it through properly," and that is why I am going to support his motion to do it in the proper manner.

I want to go back to the unfairness and the discriminatory way that we are having the pause day on Sundays. Mr Chairman, you look rather like a family man, and we feel that, as a family man, you would be home every Sunday. That is the indication they gave.

Even if you are not married, Mr Chairman, I am sure that mom invites you for dinner every Sunday. We all talk about how we should have this nice family dinner on Sundays. I have three children and I have the hardest time getting them to Sunday dinner because they have their own agenda. The fact is that we decided Sunday is the family day. If you are not home, you will not see what is happening.

I urge you and I ask all members of the committee to go around their own communities, or come to Toronto if they want to—if not Toronto, other cities—to see individuals shopping. They are not shopping because they are anti-Christian or anti-Sabbath. They are not shopping because they just want to sock it to the government, to tell them that Sunday is a great day. They are not doing that. They are doing it because they realize that it is necessary for them to go out and do some shopping.

If you ask me if I ever shop on Sunday, and I know many of my colleagues have dodged that, I will say, "Yes, I have shopped many times on Sundays." I do that because it is necessary, because the demands of my job sometimes do not allow me to get out to do the necessary shopping I want to do on Monday, Tuesday, Wednesday, Thursday, Friday or Saturday. But I like to know that I can organize myself to pick a day in which I can go out and do my shopping.

It is a cultural thing. As a matter of fact, it is a family thing to shop. These days you cannot even go to the stores without taking your children, because you will be punished in all that you have bought—

**Mr Fletcher:** It has all been said before.

**The Chair:** Order, please. We have one meeting going on here. Mr Curling has the floor.

**Mr Curling:** He is right that it may have been said before. Maybe what I have said has been said before, so are many things we are telling this government, if you were listening. Maybe it is so important it needs to be said five, six, seven, eight or as many times as possible until you come to your senses and say, "Yes, there is an area and there are people within a constituency." My constituency has almost 200,000 people. They want their voices to be heard.

A constituency that has a large population of Chinese—and I mention that specifically, I am reading this—becomes a

tourist area. My area is not a tourist area. For instance, I do not see people trekking to Scarborough North from 30 miles away and saying, "What a lovely place." We have beautiful places to be enjoyed by everyone: people who live next door to the Rouge; people who live next door to the Metro area; people visiting the Metro Zoo. It is not a tourist area; it is community living we share with everyone.

Why do we have to define a tourist as an individual who lives 30 miles out of my riding to come to certain areas and shop? Trying to define a tourist to say that individual may shop because we define that individual as a tourist—what is the definition? Oh, they live downtown, which is 30 miles or so from Scarborough.

**Mr Fletcher:** You do not even know what you are talking about.

**Mr Curling:** The honourable member may think I do not know what I am talking about. The reason he may feel so is that he has never visited my constituency, and if he has, he has done so like a tourist. He passed through for half an hour and said, "I have a full knowledge of what Scarborough is all about."

They do not have the foggiest idea what Scarborough is about. They do not have the foggiest idea of the culture or the habits of Scarborough. Therefore, in making a law, in moving on a bill that will reflect all the people of this province, you must listen. It is the first basic thing: sit down quietly and listen. That is the first decent thing to do. Listening is not a matter of sitting with glazed eye, it is sitting there and understanding, and if you do not understand, I am prepared to be asked questions continuously about Scarborough. I am prepared to go to the minister—he disappeared, but I am sure he is coming back. I am confident he will be back shortly, but he will read Hansard himself.

I am prepared to inform him about that community, and the more informed he is, the better minister he will be. It will be better that a bill, a law, be put forward that will reflect the feelings of people. So when the member says I do not know what I am talking about, I think he is saying to himself: "I have shut myself off. I have a glazed eye. I am not listening any more. I have made up my mind. I know what I am doing, so you could talk until tomorrow. We ain't listening. We are going to proceed as we feel like proceeding—insensitively."

It is funny and peculiar how the same government seems to be listening all the time and speaking for the—is it called the common people? They do not use the term "the ordinary Canadian" any more. I have never met an ordinary Canadian. I have never met a common Canadian. I have met Canadians and they do not make ordinary contributions; they all make positive, good contributions in their own way.

When you sit there with glazed eyes, what annoys me is that beneath those glazed eyes are sensitive human beings, wonderful people. What they have done is read the book on socialism and memorize it, but when you go down to the heart of these individuals, my colleagues over there, they are people—

**Mr Morrow:** On a point of order, Mr Chair: It is really nice that this man figures we read a book about socialism,

but what does this really have to do with the amendment to my motion?

**The Chair:** Thank you, Mr Morrow. You do not have a point of order, but to the amendment which is on the date and the public hearings.

1630

**Mr Curling:** That is it. That is what I am saying, for that date to come for that clause-by-clause hearing itself. What we have to do is make sure that, when we sit down, you are prepared to listen to the people first before you bring in any amendments. How can you amend something without having listened to the people? You have not listened to the people at all. We are saying to you that time is of essence to agree for us to open up this process to listen to the members here.

**Mr Mills:** How can he say he was listening although he was not there?

**The Chair:** Order. It is hard to follow. This is an extension of the House and Mr Curling has the floor. Interjections are not allowed.

**Mr Curling:** Let me comment because what my honourable friend Mr Mills said is important. He said, "How could he listen when he wasn't there?" Although we have a high percentage of illiteracy in this province, 25% functional illiteracy, I fall within the 75% of the functionally literate, in order to read Hansard and follow it closely. How can he state that when I the critic for the Solicitor General on Sunday shopping follow this very closely? He is telling me now that I was not there. I was very much there, my dear member, reading, watching and listening. Sometimes the technology of this world helps us to sit even sometimes in our office while doing other things, watching as you posture with, as I said, glazed eyes.

I want you to listen carefully. I want you to understand that there are people who would not like you to rush this thing through. I want you to understand that the individuals who would like to shop on Sunday because of religious or cultural reasons want to be heard. For you to sit by and think, "Really, no, we don't have to listen"—the reason I am emphasizing this, and it is important that I emphasize it, is that I recall very much five, almost six years of listening to the opposition of the day, the New Democratic Party. You were not here then, Mr Chair, and I know you would not have been like that. I think you would have listened just as much as they would have. They were critical of some of the things the government of the day was doing, saying the government was not listening to bills.

When we did Bill 51, which I raise from time to time because I am personally familiar with that, we listened to them. They said: "Go out and listen to the people. Let them have an input." We were all players then, landlords, tenants, developers, all interest groups in this, so we could have a better bill. Furthermore, if this committee could use the example of Bill 51, it would be advancing the cause of democracy. I am not patting myself on the back. The one I am patting on the back today is Floyd Laughren. He was Chairman of that committee. We celebrate 20 years of Floyd's membership and contribution as an elected member of this House.

I remember him sitting there as a Chairperson. He was extremely impressed that we had put together landlords and tenants to come forward on the bill. The reason I am saying this is that we knew we did not have the answers to all this. We knew the people out there knew the problems concerning them and they had a great contribution to make towards the bill. This is what this committee should be doing, not rushing it through. The NDP members knew all along that one of the wonderful things about Christmas is that it does not come in January, February or June. It comes at a precise date on the calendar every year, December 25, and you plan for it.

We as opposition members, immediately upon the assumption of the opposition, reminded them: "Let's start preparing now for a proper bill for Christmas. Let's now look at this Sunday shopping bill before us." As a matter of fact, we did not only say that; we went further than that. We left a plan, a strategy, a tried process to say: "Here is the best way in which to go. Follow that."

What did they do? They started dilly-dallying around it. The time is coming for Christmas and they are trying to bring in a Christmas shopping bill. We warned them before that this is needed to deal with it, once and for all. The areas that you have selected—as a matter of fact without even consultation. The chamber of commerce was extremely upset that you did not even consult with it.

**Mr Fletcher:** We can get rid of them.

**Mr Curling:** The member said he hoped to get rid of the chamber of commerce. That is the kind of remarks you will hear, that they have no use for business, and that is exactly the point. We are trying to have a one-sided bill. We have to listen to all concerns. We have to listen to the business community because jobs are dependent on them.

I see young members in my constituency who are going to university—and the Vice-Chair, Mr Morrow, knows that so well—or coming out of university just recently who know that sometimes parents are not able to give them the money. We have to supplement the tuition fee. The tuition fees that are going up today and the cutbacks that are happening to the community colleges and the universities are having great impact. You are taking away a day in which they could work, a choice of their own in a democratic society; you are taking that away, just because you want to put in a common pause day without thinking it through.

My colleague Mr Sorbara told you the flaws in this, how one person could go into one shop and buy certain things—you can buy magazines or whatever—and then because of the size of the area, you cannot buy. The bill is not properly thought through.

I think what they should do is not put all this on hold but put a sensible approach to this. Stop going ahead blindly, with glazed eyes, down a path that will cause more problems for all of us, problems for young people who need a supplement for their tuition fees because the economic times are tough, and problems for people who are unable to have a proper worship day because if they worship on a Saturday, they are being forced to worship on a Sunday. Now they have another pause day, an economic disaster for them.



I am saying to you, Mr Chairman, with your own influence, whatever way you can, when you are not in the chair, when you are in caucus with the minister, pull up a seat beside him, have him read some of the things that are being said here and remind him of the things that have been said here.

You see, an opposition is not here to just oppose. As a matter of fact—

**Mr Morrow:** On a point of order, Mr Chairman: Could I possibly have the clerk read out the amendment to the honourable member, so he can actually address the amendment, if you would not mind, please.

**The Chair:** That is not a point of order, Mr Morrow, but to the amendment, Mr Curling.

**Mr Curling:** Exactly, to the amendment, because here the member is telling me again that he is not listening. If he realizes what I am trying to say to him, if they listen carefully, they would bring forward a bill and time to address the issue properly. If we do not say what they have to say, we are not addressing the bill. Of course, I am really happy that you have ruled that what Mr Morrow, the Vice-Chair—and all those lovely titles that he has—is saying, as a matter of fact, is out of order, not that I am out of order; and that I am addressing the issue.

I am emotional about this, because in this country we talk about getting a proper Constitution reflecting the people, but it is the laws that we make, how we go about making the laws, how we consult with people that make it a wonderful country. When we do not consult, when we lock people out, when we have insensitive bills and laws, that makes people angry.

That is why there are so many demonstrations outside. They feel that the government is not listening. I am giving the government the opportunity now to listen. It is an easy process. Whenever you are tired of listening, ask for a recess; so if your attention span is five minutes, we take a 15-minute recess. We come back to it again for five minutes, then a 15-minute recess. The value of that five minutes of listening is better than the arrogance that we sometimes see around here, that we are just proceeding along without any thought or any sensitivity to the community itself.

I urge this committee, I want to ask the committee one request, and I hope the clerk will make a bold note of this. I invite the committee out to Scarborough.

1640

**Mr Sorbara:** Let's have a public hearing in Scarborough. That would be a good idea.

**Mr Curling:** I think your learning curve will move so high all of you will be impressed with yourselves.

**Mr Morrow:** I am always impressed with myself.

**Mr Curling:** But if you come there, you will be listening to pertinent issues concerning this Sunday shopping bill. The diversity of the community—

**Mr Mills:** Mr Chair, he is just wasting time.

**Mr Curling:** Again, it is the exact point I am saying. The honourable member for Durham East said that to make the point for Scarborough North, my riding of almost 200,000 people, is a waste of time. To make the point that

the concerns of this bill will hurt many people in my riding and I am bringing those issues is a waste of time. When they force those people who worship on Saturdays to worship on Sundays, they ask me to come forward to this committee. They said: "Tell them. They will listen to you. We elected you unanimously." As a matter of fact, there is no question of it. They sent me back and I am very proud to come back for a third term because they had the confidence that I would say this. If any member over on that side says to me I am wasting time—

**Mr Mills:** Let's get to the bill and then talk about this. That is what I am saying: Let's get to the bill.

**Mr Curling:** —my determination will be here, whether he listens or not.

**Mr Mills:** Let's talk to the bill.

**Mr Curling:** We hope, as I said, that one day it will come through to his ears and he will listen. I am sure it is not falling—I am sure they are going to tell me about being politically correct, but I hope he is not shutting his ears down. His eyes are glazed now and I hope his ears are not shut off.

**Mr Morrow:** I want to know why his eyes are glazed, Alvin.

**Mr Mills:** He tends to do that.

**The Chair:** Order, please.

**Mr Curling:** The honourable member encourages me to tell them as it is, tell them what Scarborough North is talking about. Whether or not, as he stated to me, they feel it is a waste of time, it may come home to them one day that to do this bill properly is not only in the interests of Scarborough North. You may think it is selfish that I am doing this.

**Mr Sorbara:** No, it is not. It is democratic.

**Interjection:** Get to the point.

**Mr Curling:** As soon as you have listened—I am to the point. I may have to repeat it so you will get it. I could start from the beginning again. Thank you very much, Mr Chair, for having me and what have you. I want to say to you what an honour it is to be speaking on this amendment. I am telling you, Mr Chair, since the member did not hear me, I could go back to it again. But my feeling is that he is a literate, intelligent individual, and what he has not heard, he will read.

However, I just want to continue as I tell you about my riding, because it is important. Let's talk about the businesses that are in my community and what will be affected by this if it is not addressed properly, if it is not amended in such a manner that they feel they are part of this bill, they feel they are part of this province, they feel they are part of this country.

The community has a number of businesses. As a matter of fact, we have the largest Chinese community business, I would even say, in Canada. In six months alone 20,000 Chinese school-aged children moved into the riding. Of course they buy stuff and it is good for business, because we need the community to grow and the contribution of those individuals in my community is enormous. It would take me about five or six days just to make an introduction

to what they have contributed. The other communities there are doing a vibrant business.

There was something on TV just recently about the Metro zoo. I think they said that over 20,000 visited the zoo in one day. It is busy. If individuals go to the zoo, they do not just go to see animals. I will tell you why that affects this bill. They go there and they spend money within the community. People are employed. People want to be employed. People need that money in order to live in this very difficult time. If you have 20,000 people coming to the Metro zoo in one day, they are not tourists, they are Canadians, and everyone else who is enjoying it. They are not ordinary people, they are Canadians as you always say about ordinary people. If businesses are open, it is vibrant, and they have the democratic right to shop.

You want to hear this. You want to know that this exists before you proceed in the manner in which you are going, Mr Chairman, and you will tell them, of course. I know you are taking the brunt of it because you are the Chair, but I feel as soon as I have completed all of this and my colleagues have completed it, you will get them in caucus and say, "I have been listening very attentively to this very informative, constructive position held by the members of the Liberal Party and also the members of the Conservative Party."

Shutting them down, and just being selective with a few businesses, is putting them at a disadvantage. Of course protection for the workers should be there. As a matter of fact, we have protection anyhow. It is a farce in a way to say we do not have people who work on Sundays. The nurses have been doing that for years. Many community groups are out there working. Remember the days when they would not even allow a ball game to be played on Sunday?

**Mr Sorbara:** Not even cricket.

**Mr Curling:** Not to mention cricket, which we do for the whole day. You could get away with a one-hour game of soccer or so, but cricket taking all day was disgraceful.

**Mr Sorbara:** With several tea breaks.

**Mr Curling:** Of course. As a matter of fact, starting from 10 o'clock in the morning and maybe going until 6 is a lovely game of cricket, a family day, but they said no. Today we are going to the ball game. As a matter of fact, most games are planned for Sundays. Do you know why, Mr Chairman? They feel it is good business sense.

**Interjection:** Because nobody is working and they can go to the ball game. That is why.

**Mr Curling:** But when the ball game is open and they say no one is working, it is nonsense, because they have to go to other things and they could do other things. Can you imagine if the Eaton Centre was open that day? Can you imagine the activity there, the economic vibrancy that would happen? But we decide not to consider the feelings and interests of the people of Scarborough North, the people in the Metro area or the people the province over.

So what will people do? You said it had no relevance. They will pack up their cars, jockey over to the other side of the parallel and shop till they drop. Then you complain it is a federal problem. Do you know why? Because you

have not thought it through. You have not sat down and listened to the concerns of the people who are telling you they want to shop. You are not even sitting down to say: "What are your concerns? How is this bill affecting you?" Until you do that, you will have a revolt on your hands.

Coming back to the point I made earlier about the opposition here, we are not here to oppose. We want to have the best bill, the best law.

**Interjection:** Get going. Get on with it.

**Mr Curling:** We must proceed in the proper way. It starts from the beginning. You cannot start in the middle.

**Mr Sorbara:** Bring forward amendments if you want to get on with it. Put amendments on the table, and we will get on with it.

**Mr Fletcher:** You could have done it in 1985, you could have done it in 1987. What are you talking about? You had your chance.

**The Chair:** Order.

**Mr Sorbara:** You are insufficient. You do not do anything.

**Mr Fletcher:** You did not do it when you had the opportunity to do it.

**Mr Sorbara:** Put some amendments on the table and we will get on with it.

**Mr Fletcher:** You did not when you had the chance.

**The Chair:** Order.

**Mr Sorbara:** You cannot have it both ways.

**The Chair:** In all fairness to the Chair, ever since I have taken over the Chair, there has been constant bantering, side meetings, interjections, all things that are not allowed.

**Mr Sorbara:** You have lost control, Mr Chair.

**Mr Mills:** No, he has not.

**The Chair:** If we could proceed with one meeting, have one person on the floor at a time, it would be helpful to the Chair, to the members and to the people who are here taking time out of their busy schedules to attend these hearings. Mr Curling.

**Mr Curling:** Thank you very much, Mr Chairman. I think you have full control of this. From time to time, when the truth hits home, of course, when they wake up, it is, "Oh, my golly, I'm in a committee meeting and I should be thinking about this." The attention span comes up and then they will respond. I am glad to know they are responding, but I wanted to respond positively. The opposition—

1650

**Mrs Mathyssen:** On a point of order, Mr Chair: Mr Curling has made two derogatory statements with impunity. If he wants to discuss this legislation, by all means we are listening. But this is not a forum for him to level personal and insulting remarks. This is a body where we are looking at a piece of legislation. I feel quite affronted by the kinds of disparaging remarks he keeps directing at us. I personally have a very good attention span, Mr Chair.

**The Chair:** You do not have a point of order. On the amendment, Mr Curling.



**Mr Curling:** If I offended anyone by saying that they were sleeping and were not listening, it is a figure of speech.

**Mrs Mathysen:** No, Mr Curling. You said we had very a very limited attention span. You have said it twice now.

**Mr Curling:** If I offended anyone—

**Mrs Mathysen:** Yes, you did offend someone. You offended me.

**Mr Curling:** I apologize to the honourable member if she has a limited attention span.

**Mr Sorbara:** Why? It is not your fault.

**Mrs Mathysen:** Now, Mr Curling, I do understand that you are trying to apologize, but could you perhaps phrase it in a little more meaningful way?

**The Chair:** Thank you, Mrs Mathysen.

**Mrs Mathysen:** You are welcome, Mr Chair.

**The Chair:** Mr Curling.

**Mr Curling:** Again, Mr Chairman, if in any way their attention span is not adequate enough to listen to what I am saying, my apologies. Maybe their attention span is—

**Mrs Mathysen:** That sounds backwards again to me. It does not sound like an apology.

**Mr Sorbara:** The member for Scarborough North has the floor.

**Mr Winninger:** Could you repeat what you said? I was not paying attention.

**The Chair:** There was no point of order. There is no reason to apologize. Mr Curling, on the amendment to the main motion.

**Mr Curling:** If there is anything else that has offended the honourable member, I apologize. That is exactly what we are talking about, that individuals can be offended by things that are not offensive at all. This bill is offensive to my members in Scarborough North, and I am sure the process itself is offensive to quite a few members here. So you see, I understand the honourable member, that certain things could be said. While I may be going down the road in asking about attention spans, and she says, "No, my attention span is not five minutes, it is six minutes," and I say I am sorry—or if it is 10 minutes or 15 minutes or 20 minutes—in the meantime, Mr Chairman—

**Mr Sorbara:** I think you lost her attention.

**Mr Curling:** In the meantime, I am saying we must be careful about what we do, and be sensitive of course. We must listen carefully to what the concerns of that community are all about.

Opposition, as we are on this side, is to bring about good bills, good laws. We have a responsibility to bring about the concerns, to talk about what is offensive and what is seen to be offensive or seen as not being targeted in the right direction in the process. It is not going anywhere. You have not brought forward the amendments. As a matter of fact, you should show us the amendments too.

**Interjection:** We have already shown them.

**Mr Sorbara:** They are meaningless.

**Mr Curling:** You may say to us that these amendments were shown, and that this is adequate. It is not adequate.

We are saying that they have not done or changed anything. You are going in that kind of direction that itself—we would use the word "meaningless."

It is important that as we grow, as this country grows and as this province grows in its diversity, we be more sensitive. I have seen many bills coming through here. If we are not able to say to the people that we have listened, we have noted their concern; if people are not able to look at a bill and say, "I see myself there and I have seen where the government of the day has listened"; if there is no room for us to address all those individuals to make their concern heard; if there is not room at all there, they will then say that this government is not being democratic, is not being open. But the difference is that each day in the House as I listen to the government, how open it is and how, "We are now opening this place as never before for those people to come forward who have been shut out," we find that what they did as they opened that door to let people in, just down the corridor to get into the main hall, they were building another door so people got trapped in the alley. They thought they were on their way to open discussion and able to contribute, and it is not being done.

You have an opportunity to have one of the best oppositions this province has ever had, an opposition to make you, as a government, bring good bills in. I am glad the honourable member has joined us again, because Mrs Mathysen is a person I respect tremendously in the House. I know I will get her support because she understands exactly what we are saying. She comes from a constituency that has those concerns I am addressing today. They would like the open process just like my constituents and the members of the opposition here.

When the time comes for clause-by-clause, I will be here and I will be speaking if those amendments to that bill are not adequate. You will be hearing me speak out against them, and I am sure many of my colleagues who are quite qualified and have followed this very closely will also be making their contribution. We could cut all that very short by having proper amendments coming forward, having a proper procedure being followed. This would finish, I would tell you, in half a day.

That is what we are doing. We are trying to save time because the process the committee is putting forward is not adequate. It will be bogged down in a lot of long debates about amendments and saying: "You have not listened properly. How can you do this?" So before you jump into the sea without being able to swim, what we are trying to do is give you a crash course in how to swim, so we can get to the shore properly. We will be helping you as opposition members to get there. We can shorten the time now. It is almost like saying, "Pay me now or pay me later." Let's deal with the issue.

There is a knocking in the car; there is a knocking in the bill. It is not perfect. The process is not perfect. Correct it now so that when we get to clause-by-clause, we will be humming along. Because if all had understood, we would have got some—I hate to use the word "sense," but some sense in the bill. I am saying sense as individuals, that it makes sense. People could look at it in my riding, people could look at it in Windsor, people could look at it in North

Bay, Moosonee and Rainy River, and everyone could say, "This bill represents us and we got there by the proper process."

If I believed that I would not be listened to, I would not have been speaking today. I am extremely confident in my colleagues here that they have heard what I have said, they have heard what many of the other colleagues on this side have stated and they will respond accordingly. They will then have a little caucus on their own and decide that they will change their strategy.

I think it was last week that, when the honourable member for York Centre put some examples forward here, the minister was so moved by that, you could drop a pin. He was listening. He understands that. Being a previous mayor, he understands the closeness of the people and how bills and laws can affect people. The member for York Centre put him into that situation, placed him into the store, placed the individual who would have been buying that product, and I could see the light in his face. I could see the vision of him saying, "Yes, we are going down the wrong road and the honourable member for York Centre is making a lot of sense."

1700

If you need help, we are here for that. We are here, Minister, to make sure the bill is as perfect as possible. It will not be completely perfect. There are no bills I know of that are perfect. There is no one single bill I know of that is perfect. As we change in our community and in the diversity of our population, we have to adjust accordingly. But the minister was aware of the implications and the process and the passage he was going on, and I am saying to him I think there is hope.

The members of course rebel at some of the truth I am saying and are annoyed by it. Sometimes it hurts to admit the fact that we are going on the wrong road. You may recall when the process of the insurance bill was hijacked, the public insurance that the government of the day had promised. They decided to say the same words the Liberal government had, which had researched and said, "This is the way we should go." They came out and said, "Yes, it's too expensive and this is the no-fault process we should go," the same things we were saying.

Speaking of that is like the descending of the heavens. Mr Kormos, who has walked in, understood that too. When they came to their senses—I do not say that to offend anyone; I use it as a phrase—and said that, what did this opposition party do? We applauded the government for taking that position. We did not say, "I told you so." No, we applauded them. We said, "It is an extremely difficult issue to address." We had tremendous consultation. We had to change our positions regularly as we consulted, as we listened. Then we said, "This is the best way to go."

The opposition of the day, now the government, told us that we sold out. As soon as they arrived and had their consultation, they realized the power of consultation, the power of listening. They listened and decided to agree with the position taken by the Liberal government of the day. We applaud the government for doing that. On this side of the fence, we want to applaud them for bringing about one of the best bills, the Retail Business Holidays Act when

they amend that, and say that they have listened and have brought out one of the best bills. Again, it is not done just by the amendments. It is done by the process, how you get to the process. If we do not, we will pay heavily for that. We may not pay for it now but we will pay for it later.

I want to thank you, Mr Chairman, for conducting this in such a very professional manner and allowing me to state the case for Scarborough. I can speak with more emotion for Scarborough because I have lived there for over 20 years and I know the people. They asked me to bring to you and this committee the message I stated today about the process. They asked me further to follow this rather closely, not only for Scarborough but for the province.

I had to commend them for it as I went around my constituency and talked to those interest groups, because they were not selfish or parochial in their thinking. They were thinking about the province. They felt that what is good for us here in Scarborough North may not be good for the people out in Windsor, Rainy River, Moosonee or wherever their other brother and sister Ontarians are. They were confident that because I was emotionally moved by this, I would present it properly.

I do not think I have done justice to it in its entirety. I do not think I will ever do justice to this cause, because I know that when they presented their case to me I listened and I was so moved I felt completely inadequate to do this. But I have a responsibility as a representative to say to you all, "This is what is being said there." Do not ever underestimate the fact that I have travelled this province and listened to other people making this point of view too. They are consistent in what I am hearing. I urge you to adopt a process—I am not playing games with all this to get political points; I do not think they are doing that really, because it would be extremely dangerous to do that—in which our people would be better served regardless of culture, regardless of class, regardless of creed, and to be sensitive in that process.

**Mr Sorbara:** Mr Poirier was next on your list.

**The Chair:** Mr Morrow was next.

**Mr Sorbara:** I am sorry.

**The Chair:** Mr Morrow, further debate on the amendment.

**Mr Morrow:** Thank you very much, Mr Chair, I really appreciate that. Yes, I am going to speak to the amendment for a moment, if you do not mind. I obviously will not be as long as the honourable member was. Can we regress back to 1988 and 1989 when we had those flawed pieces of legislation, Bills 113 and 114? You know that legislation was like an airplane hangar; you could drive a plane through. Bill 115 is an obvious improvement. Look at the court challenges we faced under that. We had wide-open Sunday shopping from June until March, and there were a lot of problems.

**Mr Harnick:** There were? Name one problem.

**Mr Morrow:** We obviously listened all summer to the people. We hit 11 cities around this province and I am sure anybody will tell you that 11 cities on a tour is one heck of a big tour. There is no question about that. The only thing I have obviously seen going on here by the opposition



members is an awful lot of stalling. Come on, let's be serious. The taxpayers of this province want us to move on with that.

**Mr Sorbara:** No, they do not. They do not want us to move on with this bill.

**Mr Morrow:** In saying that, Mr Chair, at this time I would like to call the question, please.

**The Chair:** The question has been called. It is non-debatable. All those in favour of calling the question?

**Mr Sorbara:** I would just call for a 20-minute recess for a vote. In calling for a 20-minute recess I simply want to warn the whip and the Vice-Chair of this committee that if he is going to use closure on this, he will have a long, difficult, troubled time getting this bill passed in each of its clauses.

**Mr Fletcher:** Does this mean stalling again?

**Mr Sorbara:** No, it means the furthest and most penetrating debate we can hear on each word, comma and other punctuation mark. You ought not to do this, Mark, you ought to sit down and negotiate some reasonable changes to a piece of legislation which right now is unacceptable to the people. If you think we are here talking for the benefit of our health or our lungs, you are nuts.

**The Chair:** Order, Mr Sorbara.

**Mr Sorbara:** We are just trying to make some improvements to a bill that is not going to work in a province that is suffering—

**Mr Morrow:** What do you think we are trying to do here? We are also trying to make improvements.

**Mr Sorbara:** —so do not come in here and use closure every time you want to get your way.

**Mr Fletcher:** I think it is about time you guys stopped stalling.

**Mr Sorbara:** Let's have a 20-minute consideration of the question.

**The Chair:** We will recess until 5:30.

The committee recessed at 1709.

1730

**The Chair:** I call the committee back to order.

**Mr Sorbara:** On a point of order, Mr Chair: I raise before you, sir, and the members of this committee, what I consider to be a very difficult and perhaps unique, but nevertheless troubling, point of order arising from the procedure which got us to a point of having the question on the motion and the amendment to the motion that we were debating put before this committee.

If I can just put the facts before you, this afternoon we began debate on the amendment placed here by Mr Chiarelli, the member for Ottawa West, to the motion initially placed by Mr Morrow that this committee return to clause-by-clause consideration of Bill 115. Today, Mr Chair, I addressed a few remarks to you at the opening of these discussions. I just want to review those remarks because they are pertinent to this point of order.

At that time in my remarks, and I invite you to review Hansard, I stated that on the amendment the committee was at that time considering, I would make a few opening

remarks, but I was simply doing that to get us back into the flow of the business because my colleague Mr Curling, the member for Scarborough North, had some things to say to the committee on the amendment to the motion, and Mr Poirier, the member for Prescott-Russell, had some remarks to address to you as well.

I anticipated that in doing so I fulfilled the routine, or the obligation or the procedure, necessary to help you determine the list of speakers. Mr Curling did have an opportunity to deliver his remarks.

**Mr Morrow:** On a point of order, Mr Chair—

**The Chair:** We are on a point of order, Mr Morrow.

**Mr Sorbara:** I am speaking to a point of order, Mr Chairman. It is complex and I beg the indulgence of the committee and ask you to hear me out. I would also advise, sir, that I think a couple of other members will want to speak to this point of order as well. It is one of substance and significance and needs consideration.

Just to review, I indicated to you the speaking order for today for our members. I do not make any comment as to whether Mr Harnick wished to speak on the amendment. I leave that up to him. He may or may not have indicated to you his desire to speak. Nor do I recall Mr Morrow indicating to you in any way whatever that he intended to speak to the motion or secure the floor. I appreciate that we are operating under the orders relating to standing committees and I believe—you might correct me if I am wrong—that we are operating under section 118(a) of the standing orders, which reads as follows:

"The Chair of a standing or select committee shall maintain order in the committee and decide all questions of order subject to an appeal by the majority of the members of the committee to the Speaker." I note in that regard that an appeal would be appropriate here to the Speaker. "No debate shall be permitted on any decision of the Chair." I understand that provision as well.

It seems to me that regrettably we have not had time to carry out full, or any frankly, research on this point, but I would argue strenuously that under the circumstances, having implicitly acknowledged that there were at least two speakers from the Liberal caucus anxious to speak on this bill, you implicitly agreed that at least those two speakers would have the floor or would be permitted the floor to speak on this motion.

I understand that the ruling you made very quickly without any consideration is a ruling that in a theoretical sense you have the right to make. I acknowledge as well that the tradition in this committee is that speakers speak in rotation; that is, we move from the official opposition to the third party to the government or from the government to the official opposition to the third party in a rotation, and that allows each party and the members interested in the issue in each party to have their say.

I point out to you as well, though, that there is a long tradition in committees that where government members do not wish to substantially contribute to the debate, the speeches on issues before the committee can, rather than go in rotation, just proceed from member to member, given a member's interest in speaking.

Historically in this committee—and if you go to the practices and procedures in the standing orders, you will see this—there is a well-established tradition of a number of speakers from the same party speaking to an issue. I want to submit to you in conjunction with this point of order that by acceding to my request and listening to my remarks and creating a speakers' list, you agreed that this question was sufficiently significant before this committee to allow for at least the speakers that you had acknowledged wished to speak on the issue. In that respect, I point out again that you had not at that point consulted with the third party to determine whether it wished to speak to the issue.

When Mr Morrow got the floor, just to review the history somewhat, rather than speaking to the substance of the bill he quickly brought to you a motion to put the question, and that really is the issue that arises here on the point of order I am bringing to you. The precedents and practices of when a Chair of a committee such as this standing committee on the administration of justice shall determine whether or not a matter has been sufficiently debated is a question that still remains in some doubt. In fact, if you were to simply allow an adjournment of this committee so that issue could be pursued by legal research, I think that would resolve the point of order I am bringing to your attention now.

But absent your willingness to do that, I suggest to you that, in considering Mr Morrow's motion to put the question, you were bound to reject it at that time because you had already made a decision as the Chair of this committee acknowledging that Mr Poirier was going to be a speaker to the motion. It may well be that after the list of speakers had been exhausted or some other member who had already spoken to the motion wished to speak again that you could intervene, notwithstanding that you had put his name on the list. I acknowledge your right and ability to do that, but I do not think you can at one and the same time acknowledge that Mr Poirier will be speaking on the motion and then make a decision inconsistent with that determination. I suggest to you that at the beginning of these hearings you did indicate on the speakers' list that Mr Curling and Mr Poirier would have something to say. That is implicitly a decision on your part to allow the debate to continue at least to that point.

There are only so many members of this committee. I do not think that on your speakers' list you had indicated that any other government members wished to speak, nor do I believe that you had canvassed whether or not the Conservative Party members wished to speak. I would submit to you that it is inappropriate for you to make a split-second decision supporting Mr Morrow's request that the question be put. I also submit to you that the practices and procedures of this committee and this Legislature indicate that at least you have an obligation to reflect on whether or not the matter had been debated. That is your responsibility as Chair.

The reflection you need to make on such a point must include the fact that you have already determined that at

least one other member wished to speak to the question. More than that, I want to submit to you that you might under those circumstances reject that name on that list if the member wishing to speak has no real and substantive relationship with the committee or with the issue that the committee is dealing with. But that is not the case when we consider that Mr Poirier wanted to speak. Why do I say that to you? I say that to you because Mr Poirier—

**The Chair:** Mr Sorbara—

**Mr Sorbara:** I just beg your—

**The Chair:** —if I may rule, this should have happened before the division.

**Mr Harnick:** I want to speak on the point of order, so do not rule.

**The Chair:** There is no debate here. There is no point of order. First of all, there has been sufficient debate. Today was not the beginning of the debate on the amendments. We have debated the amendments. Everybody on the committee in the opposition has spoken to the amendment by Mr Chiarelli except Mr Curling, who is here for the first time today.

**Mr Sorbara:** No, I beg your indulgence. Mr Poirier has not—

**The Chair:** He has spoken on the amendments.

**Mr Sorbara:** Have you spoken on the amendments?

**The Chair:** On Mr Chiarelli's amendment, therefore there is no point of order.

**Mr Sorbara:** If I might just continue for a moment, sir—

**The Chair:** My ruling is there is no point of order, Mr Sorbara.

**Mr Sorbara:** I am sorry, I am going to have to challenge your ruling.

**The Chair:** All those in favour of the Chair's ruling?

**Mr Sorbara:** Wait a minute. I would like a 20-minute bell on this.

**Mr Morrow:** We just had a 20-minute division to speak on my question.

**Mr Sorbara:** I have a right to challenge the ruling of the Chair, we have a right to vote on it and I have a right to call a 20-minute bell.

**Mr Morrow:** We have a division on the original one, Mr Sorbara.

**Mr Sorbara:** You people will not consider the substance of this matter.

**The Chair:** Order.

**Mr Morrow:** We are supposed to walk in here and vote on the division.

**Mr Sorbara:** I am sorry. I believe it is a point of order.

**The Chair:** We are adjourned until tomorrow at 3:30. The committee adjourned at 1742.



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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** Cooper, Mike (Kitchener-Wilmot NDP)

**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)

Carter, Jenny (Peterborough NDP)

Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathysen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Winninger, David (London South NDP)

**Also taking part:** Curling, Alvin (Scarborough North L)

**Clerk:** Freedman, Lisa

**Staff:** Beecroft, Doug, Research Officer, Legislative Research Service







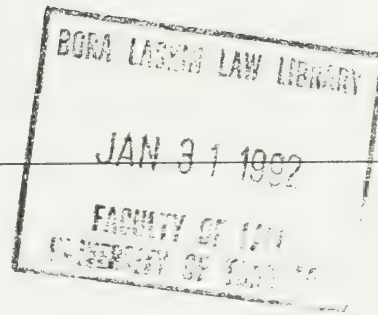




J-53 1991



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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 22 October 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 22 octobre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 22 October 1991

The committee met at 1547 in committee room 1.

**The Chair:** I call the standing committee on administration of justice to order. First we will have the vote on the question: Shall the Chair's ruling be appealed to the Speaker? All those in favour? All those opposed?

Motion negatived.

**Mr Sorbara:** Recorded vote? Oh, I am sorry.

**The Chair:** The vote has already been taken, and defeated.

On the next one, a vote on Mr Morrow's closure motion. All those in favour?

**Mr Sorbara:** Recorded vote.

1548

The committee divided on Mr Morrow's motion, which was agreed to on the following vote:

**Ayes/Pour-5**

Carter, Fletcher, Mathysen, Morrow, Winninger.

**Nays/Contre-3**

Carr, Poirier, Sorbara.

**The Chair:** Now we will vote on Mr Morrow's main motion, that we resume consideration of Bill 115. All those in favour? Opposed?

Motion agreed to.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** We will now commence clause-by-clause consideration of Bill 115. The parties have agreed to 10-minute opening statements. Can we have the Solicitor General make his opening remarks?

**Mr Sorbara:** Mr Chairman, before Mr Pilkey, the Solicitor General, makes his opening statement, can I raise a point of order? I ask the clerk for a copy of the rules so that I can make sure my reference to the point I raise is correct.

I am referring to section 73 of the standing orders of this Legislature and its standing committees. The section comes within part XV of the standing orders, dealing with

public bills. Perhaps what I might do is just read the section to my colleagues on this committee. It deals with amendments to public bills and reads as follows:

"When time permits, amendments proposed to be moved to bills in any committee shall be filed with the Clerk of the House at least two hours before the bill is to be considered, and copies of such proposed amendments shall be distributed to all parties."

Mr Chairman, you will be aware that my colleagues and I, on behalf of the Ontario Liberal Party, submitted amendments to you and to the committee several weeks ago for distribution. In fact, we submitted those in anticipation of clause-by-clause consideration on September 16. At that time, my friend the Vice-Chair of this committee, the member for Wentworth East, moved a motion that we postpone indefinitely clause-by-clause consideration of Bill 115. Nevertheless, we did, as I say, submit a number of amendments. As I recall, I do not think the Progressive Conservative Party has submitted any amendments.

**Mr Carr:** You just got them.

**Mr Sorbara:** There are amendments? I apologize to my friend Mr Carr. The government has also submitted amendments. I will be making arguments later on, sir, that at least one of those amendments is out of order, but we can take that up later.

I refer to the opening phrase of the section of the standing orders I just read, that is, "When time permits." My argument to you, sir, is that there has been an incredibly long amount of time. Time has permitted the government to submit amendments, and I would like to be advised at this point, sir, whether or not, under the standing orders, the government intends to submit additional amendments to this bill.

This bill has been a very contentious piece of legislation. The government is, in the view of many people in this Legislature and millions of people in the province, about to proceed with a bill that is not in keeping with the best interests of the province and the best interests of retailing in the province, but that is a substantive discussion.

What I would like to know, under that standing order, is whether we are to anticipate further amendments. The problem with proceeding with clause-by-clause at this point is that if the government does not know now what its position is going to be on several sections of this bill, we are better advised simply to postpone consideration until the government has come to a final determination. It would be capricious to begin clause-by-clause and present our arguments on each section, subsection and clause of this bill without any further information about whether or not the government plans to submit amendments. On that point, sir, I would ask that you make a ruling as to whether or not it is appropriate, given the time that has passed, that further amendments be submitted, or at least make an inquiry of



the minister as to whether or not further amendments will be permitted.

**The Chair:** I would say you do not have a point of order.

We are now starting the clause-by-clause. The clerk has now passed out the amendments. The Chair does not know if there will be further amendments coming down. If the Solicitor General would like to respond to that, he may. Amendments can be brought in any time, when time permits.

**Mr Sorbara:** I just point out again that the section I read says that amendments are to be submitted at least two hours before consideration begins.

**The Chair:** When time permits. If the Solicitor General wishes to respond, he may. If not, he may start with his opening remarks.

**Mr Sorbara:** I leave it in your hands.

**Hon Mr Pilkey:** Mr Chairman and honourable members of the committee, I am pleased to be here today to begin clause-by-clause consideration of Bill 115. I look forward to constructive and productive debates throughout the committee's consideration of Bill 115 and proposed amendments.

I must thank many of the committee members for their very kind and gracious words the other day as I sat in the visitors' gallery. I thought they were appropriate and correct, and I hope that same spirit of good will emerges here as we continue to go through the amendments and the clause-by-clause.

Bill 115 is fundamentally about maintaining and enriching community life of Ontarians and ensuring that as many people as practically possible can take advantage of the benefits of a common day to pursue personal and family activities. This bill is about protecting the rights of retail workers and small retailers and their families to enjoy a day on which they can relax and rejuvenate from the daily grind and commercialism of the week. It is about recognizing the unique nature and requirements of Ontario's tourism industry, which promotes and enables leisure recreation and family activities.

Bill 115 is not about Sunday shopping; it is about Sunday working. It seeks to improve upon the existing Retail Business Holidays Act in order to ensure that a large sector of Ontario does not have to work in order to provide shopping convenience for other sectors who are able to enjoy a common pause day. It has been stated many times that the principles behind common pause day legislation are not up for negotiation but that the government is open to suggestions on how best to make them a reality.

The government has asked for and has received input both prior to and through the work of this particular committee. We take the public consultative process very seriously on Bill 115 and our proposed amendments are based on both our stated principles and the input received from the general public. I ask that you keep all of this in mind as you continue your deliberations on the bill and proposal for amendments.

I urge the committee as well to move quickly through these deliberations in order to eliminate uncertainty and minimize confusion for retail workers, retailers, municipalities, the tourism industry and the general public. I ask

for your co-operation and constructive debate so that the people of Ontario can be assured a fair, enforceable law that enshrines the common pause day in our province.

The sooner we pass legislation, the sooner the municipalities and retailers can enjoy a significantly improved level playing field; the sooner workers and their families can enjoy a day of leisure and family activities; the sooner the tourism industry and municipalities can plan for the development of bylaws which recognize the unique nature of their respective communities.

The government is committed to quick passage of the amended bill and urges you to move quickly in order to correct the situation that now exists because of the flaws in the existing Retail Business Holidays Act and recent delays. I request that all parties move speedily on this particular bill.

As we move ahead during the clause-by-clause examination of Bill 115, the government will introduce and support amendments which address the following:

1. An appeals mechanism through which a tourism exemption bylaw can be challenged. This process will be administered by the Ontario Municipal Board and would ensure that those municipal tourism exemption bylaws are consistent with provincial criteria. The Ontario Municipal Board will make its best efforts to deal with appeals within a 90-day time frame.

2. Protection for workers who challenge tourism exemption bylaws. We believe that employees who feel their quality of life will be adversely affected by such bylaws should be able to challenge them without fear of reprisal.

3. Provision for ensuring that any person with an interest can apply for a court order which would compel a retail establishment to comply with the provisions of the Retail Business Holidays Act.

4. A minimum fine of \$5,000 on third and subsequent offences. This clearly demonstrates the seriousness with which our government considers common pause day legislation.

5. A requirement for municipalities to hold public meetings when considering applications for tourism exemptions. This would involve a less formal, more open and accessible procedure than the public hearings called for in the original text of this bill.

#### 1600

We are aware that the issue of drugstores, both with respect to their size and the types of goods they are permitted to sell on holidays, is a continuing concern. We believe the situation requires more public information, not additional legislation at this time.

As I have stated, our government has welcomed public input and we have taken public advice. In response to that input, an advisory group that will assist in the development of the tourism exemption criteria has been established. The criteria will be set out in a regulation made under Bill 115.

This advisory group is composed of representatives from business, labour, tourism, religious and other groups, and it will advise the government on the content of effective tourism exemption criteria. The group is chaired by someone from outside government and is supported by representatives from provincial ministries involved with the development and administration of common pause day



legislation. We want to ensure that the criteria which define legitimate tourism areas are developed in partnership with the broad range of affected and interested Ontarians.

Throughout the public hearings on Bill 115, presentations were made to this committee by supporters of common pause day legislation which addressed the significance of the exemption criteria. Fairness and enforceability were chief concerns voiced by many. Establishing a level playing field for those seeking exemption was cited as a priority by presenters expressing a wide range of views. As well, it was made abundantly clear that municipalities want clear direction in the administration of their bylaw-making powers.

The work of this advisory group will greatly assist in the development of clearly understood exemption criteria that protect the tourism industry in Ontario and promote a common pause day for Ontarians. As a former mayor, I recognize the importance of such criteria. This is the most effective means to ensure consistency in the local application of a tourism exemption on a province-wide basis. The development of the exemption criteria should be made as closely as possible in co-ordination with the progress of the bill itself. With that in mind, we will endeavour to bring the efforts of the advisory group and the government to fruition as soon as is possible.

I can tell you now as well that the reference to the chambers of commerce will be removed from the text of any resulting regulation, and that at the chambers' request.

Common pause day legislation is fundamentally about enriching the community life of Ontarians and ensuring that as many people as practically possible can take advantage of the benefits of a common pause day to pursue personal and family activities. The work of this committee and the thoughtful input from the public are helping our government achieve our long-standing commitment to provide common pause day legislation that protects the rights of retail workers while recognizing the unique requirements of the tourism industry in Ontario. Thank you for allowing me to make this statement and to participate in the clause-by-clause deliberations as they now proceed.

**The Chair:** I believe you have agreed to a few brief questions.

**Mr Sorbara:** I have a couple of questions arising out of the statement by the minister. The first has to do with the reference in his statement to the so-called drugstore issue. I think, if I recall correctly, the minister said there is need for more public input.

First of all, does he not realize that we had a number of very significant submissions from the public on this subject, from the enterprises affected by the legislation, including small drugstores and large drugstores, and that there has been a rather fulsome debate and an incredible amount of discussion privately on this issue? Given all that, what does he mean in his statement by the necessity for more public input?

**Hon Mr Pilkey:** Bill 115 did not envisage approaching the drugstore issue. It was not then, it is not now; it does not fall within the four corners of this particular bill. On that basis, I believe it would therefore be required in

subsequent legislation, and in order to do that, additional public input and consultation would need to be entertained.

**Mr Sorbara:** That answer is fine, except that although it did not fall within the four corners, as he says, of this bill, the fact is that there was an incredible amount of debate, there were lengthy submissions and a number of people went through a great deal of difficulty to make their point of view heard. The minister is entirely lacking in credibility on this issue, I am sorry to say.

I just want to make this point. We had virtually no public input on whether or not an individual citizen ought to be able to approach the Ontario Court (General Division) to seek an injunction. I do not remember one public submission seeking that sort of remedy here before this committee, and I attended virtually all of the public hearings; nor have we had any debate on it, nor was the amendment within the so-called four corners of the bill. In fact, the amendment the minister has brought to us is out of order and cannot be considered by this committee.

So I say to the minister, how can he at one point in his remarks say that it is okay to ignore the drugstore issue because it is not in the four corners of the debate, and at the same time put his signature and the authority of his office to an amendment which was not called for during public hearings, is out of order, does not come within the four corners of the bill and cannot be considered by this committee? How do those two things jibe?

**Hon Mr Pilkey:** Could I inquire through the Chair to the member which amendment the government proposed that in his opinion is not within the four corners of the bill?

**Mr Fletcher:** We have not placed any yet.

**Mr Sorbara:** I tell my friend from Guelph that the government has proposed amendments. I will tell you directly, sir, which amendment it is. It is the amendment—

**Interjection:** The OMB or the court?

**Mr Sorbara:** Not the OMB.

**The Chair:** I advise the members I will not be ruling on any amendment until it is moved.

**Mr Sorbara:** No, I appreciate that.

**Hon Mr Pilkey:** Perhaps I could assist in this sense, Mr Chairman. The government does not believe that any of the amendments it has brought forward are other than properly before the committee and would fall within the four corners of the bill, and we are prepared to debate that issue if and when it is raised for a decision by the Chair. That is why I do not have any difficulty with my comment about the drugstore issue not falling within the four corners, because we do not accept the premise that other amendments are out of order.

**Mr Sorbara:** Just to answer the minister's question, the amendment is the one dealing with an application to the Ontario Court (General Division). I will later on be submitting to you, sir, the authority for the proposition that this is entirely out of order, but it is not a difficult argument to make. There are all sorts of rulings by committee Chairs and by legislatures, both federal and provincial, saying that you cannot move an amendment to a section of an act that is not dealt with in a bill.



**The Chair:** I believe we could go through this debate later on somewhere.

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**Mr Sorbara:** But he is asking me the question. I think it is entirely lacking in credibility that the minister tries to propose here that this amendment is out of order. It amends a section of the Retail Business Holidays Act—that is, subsection 8(1)—which is not addressed in the bill. I would just like to hear the authority at this point of the arguments that we are going to have met, because section 8 is not addressed in the bill.

**Mr Morrow:** On a point of order, Mr Chair: Can we not deal with that when we move into clause-by-clause?

**Mr Sorbara:** Just to finish, sir, he is saying this amendment is in order, and every ruling of every committee would suggest that it is not in order. If he is putting that before this committee now, he has to provide authority, because these are different rules from what this House has been governed by for 130 years.

**The Chair:** We are not on amendments right now. We are on questions on the opening remarks by the minister.

**Mr Sorbara:** Okay, I have one more question for the minister then. I just want to ask the minister whether he is proposing during the course of clause-by-clause consideration of Bill 115 to bring forward any further amendments for consideration by this committee. It is a yes or no answer.

**Hon Mr Pilkey:** If the question was asked in one word, I would feel compelled to respond in one word, but since the question was asked in a multiplicity of words, I will take equal advantage and respond in kind. The government has presented the amendments that the committee has to date. If there are any subsequent amendments to be tabled with the committee, that would be done under the rules prescribed, with the proper advance notice.

**Mr Carr:** I have a question on that same point too, whether you are contemplating bringing forward any amendments.

**Hon Mr Pilkey:** I could only offer you the same response. The amendments you have are it at this point in time. If there are additional amendments by the government, they will be brought forward and circulated with the proper notice.

**Mr Carr:** Are any under discussion now before anyone? That is what we are trying to get at. Have you finished the discussions or what?

**Hon Mr Pilkey:** I cannot really speculate. I can only bring you those amendments that are approved by the government, and at this point in time you are in receipt of those.

**Mr Carr:** On the question regarding stakeholders, I have your old comments that were going to be tabled. I understand they have changed a little bit. The group that is being put together to take a look at it—what are the groups, again, if you could spell them out? I missed them.

**Hon Mr Pilkey:** I think somewhere here I have an exact list, if I can locate it. Basically, they were representatives of business, labour and various ministries who would have a direct interest in this, and certain other individuals who have had an interest in the ongoing development of

the bill. I do have that list; actually, I can give you the specific names.

**Mr Carr:** What I wanted was what the proportion is, if you know that too. But if you give me the list, that would be great.

**Hon Mr Pilkey:** Yes. It is a variety of individuals, and I do not believe you will find this weighted particularly with any bias.

**Mr Carr:** As you know, everything falls down into the tourism criteria. That is the whole thrust of the bill. Why did we not take a look at this before we introduced it? Of course, we are going back and changing it now. Everything hinges on the tourism criteria and it is very difficult. Why did we not do this before we went through and introduced the bill? Why was it not done at that time?

**Hon Mr Pilkey:** I do not know that I can respond to that. As you might appreciate, when the bill was brought to the House for first and second reading, it was under the leadership of the previous minister. Since taking charge of the bill more recently, it was my view and, I believe, a view shared by a large number of people, that the preliminary criteria that were established really set a general direction but were not perhaps of a strength and definition that would be suitable to ensure that the intent of the tourism criteria was being accomplished and achieved. So the government has sought the assistance of people—and I now have the list of the names if you would like them—who would appear to be appropriate to make recommendations to the minister and the government. If you wish, I can indicate who they are.

**Mr Carr:** Or if you just want to make a copy, it might be simpler.

**Hon Mr Pilkey:** Whatever you wish. I will be pleased to circulate it. Just very quickly it includes: unions, Fairness for Families, the Ontario Federation of Labour, shoe retailers, hotel associations, Canadian Retail Hardware Association, a representative from a municipality which I believe also was or is involved with AMO, a vice-president of the Bay, National Grocers. I think you will find it is fairly balanced.

**Mr Carr:** As you may know, up in Kingston, I believe, there was some controversy with the United Food and Commercial Workers International Union saying that if it did not get support for the bill, it was going to withhold funds to the NDP, and it said there had been a vote on that. As I look at the amendments that were brought in, a couple of them are the fundamental proposals that the United Food and Commercial Workers had proposed when they said, "If the bill is not changed we are not going to give any money to the NDP." Could you clarify for the record that there was no undue influence on you regarding this?

**Hon Mr Pilkey:** I do not have any direct knowledge of that whatsoever.

**Mr Carr:** Do you know the circumstances of what was said in the committee?

**Hon Mr Pilkey:** No, I do not. I recall some press report or some verbal comment, I believe, during the summer when the committee was out that someone had made a statement of some sort. What exactly it was or whether it was valid



or whether it had the support of the labour council or whomever, he said some suggestion was made, but I do not have any direct knowledge of that and I am not aware.

**Mr Carr:** Just so you know what happened, they said they were going to withhold money unless they got certain things, and it was very important. They had a vote and the vote was negative, but it was put on the table. These recommendations that have come through that you have now tabled this afternoon are the very ones they brought forward. Let us talk about the public perception being that you caved in to the United Food and Commercial Workers. So if you have not looked into it, I suggest you should, because I would like to bring this further.

**Hon Mr Pilkey:** Let me answer you. I have no direct knowledge of that. I do not believe there has been anything untoward that I am aware of. If this committee was directly involved in the presence of the individual who made any such assertion, I hope the committee would have acted judiciously and legally to resolve any such circumstances.

**Mr Carr:** I have two letters to the Attorney General, both unanswered, regarding this issue. I have asked the Attorney General to look into it as the top law enforcement officer. I had to do a follow-up.

**Hon Mr Pilkey:** It has had no impact on me, I can assure you of that.

**Mr Carr:** Just so you know, the perception out there is that you caved in to it.

**Hon Mr Pilkey:** No. How much was it, by the way?

**Mr Carr:** I do not know.

**Mr Morrow:** I am just going to be very brief, if you do not mind. I would like, first of all, to give you a pat on the back for a job well done. I think you really deserve that. That is from myself and my other colleagues on justice. It has been a long summer. We have hit 11 cities and we have had over 280 submissions. You came on board halfway through. You have done a fine job. You should really be commended. Again, thank you very much. There is no question there, I just wanted to thank the minister.

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**Mr Poirier:** There are two points while you are here, and I appreciate the fact that you are here.

The first point is, I am sure you saw the newspapers last week, "'Ontario Must Pay for Non-Christian Holidays,' Board Says." There were a lot of press clippings pertaining to the right of non-Christians to be able to take time off. From all the reading I have done on this particular topic, this seems to be indicating the wave of the future.

In your presentation you talked about, among other things, a level playing field. I was always under the impression that your party wanted to protect those who may be different, who are not part of the majority. With the ruling that the Ontario government should pay workers for the days they take off to celebrate non-Christian holidays, and for those Christians who celebrate holidays that are not on Sunday, with that in mind, and the Charter of Rights and Freedoms and the Constitution, would you explain to me what you will say to those people who do not have Sunday as their day off?

You are giving protection to those who have Sunday as their day off for religious reasons under Bill 115. What are you going to tell the other ones? How the heck are you going to explain that to them? In 1991, and soon 1992—and I say this very much in sincerity—I would not want to be in your shoes to try to explain that. I respect you very much personally, but especially for a party that has always claimed from the rooftops that it puts everybody on the same footage, with these kinds of decisions coming up right now, how are you going to do that? What are you going to tell them? I would like to know.

**Hon Mr Pilkey:** I think that is a fair and reasonable question. I cannot purport to speak knowledgeably with respect to those rulings and those issues that do not fall directly within my ministry, but I understand the context in which you raise them.

I suppose one way to solve that circumstance would be to say that because there is some level of difficulty surrounding the question you raise, perhaps the only answer would be not to have a common pause day at all. While that would be one way to deal with those exceptions, the government is committed to a common pause day, as imperfect as it is, that will hopefully reach out in at least a majority way to achieve the goal of having that common pause day for individuals and families on that common day of rest. I would have to agree with you in admitting that it would not cover each and every circumstance, but to the extent that it does so in the best way that it can in this pluralistic society, I think it is the best we can offer at this time.

**Mr Poirier:** We will surely be discussing that at some further point, but I want to make you aware that I am going to expand on that particular point. I am very upset by this. Call it what you will, it is discrimination. You know that and I know that, and they know that especially. I want to expand upon that.

**Hon Mr Pilkey:** There is one other element to that question. We do not need to explore it now. You did not raise it and it is probably not appropriate for me to, but there is the other question, on religious grounds, of the proprietor. If there is another day that is held in reverence, they can alternate, switch that off.

**Mr Sorbara:** Not the workers.

**Hon Mr Pilkey:** Not the workers.

**Mr Poirier:** We will definitely expand on that with your representatives on the other side at some point in the clause-by-clause.

Would you go back for me? I was just trying to grab this on the fly. Pertaining to the appeals mechanism, you mentioned the Ontario Municipal Board. I have had discussions with your colleagues in this committee in private and even in public. As the former mayor of a fair-sized city with a lot of experience with the OMB, do you honestly believe the OMB, the way it is now or even if you expand it, can handle the overload that will be thrown at it from the appeals mechanism that with your goodwill you want to bring forward in this law? Do you honestly believe the OMB can handle it?

**Hon Mr Pilkey:** If the Ontario Municipal Board was going to handle these challenges to tourism exemption



bylaws in the normal sense and with the normal mechanisms, I would say I do not believe it could. I believe there would be such a delay as to render the circumstance unworkable.

However, the Ontario Municipal Board has indicated that it will use a special, unique, alternative—whatever phrase we might want—approach to the tourism exemption bylaw challenges: They will expedite them. They will use their very best efforts to deal with them within 90 days. In that way there can be certainty to the bylaws the municipalities pass and certainty to the applicants who have applied for them.

If the Ontario Municipal Board fails to do that, I would agree with the concern you raise that there could be great difficulty in Tourism Ontario. But it is our understanding and our belief that they will make those special efforts, they will go that extra mile, and they will achieve that within or very close to those 90 days, which then of course will render the problem not a problem at all.

**Mr Poirier:** With the existing resources of people, staff and budgets?

**Hon Mr Pilkey:** No. My understanding is that they are going to have to call on additional staff and make some additional expenditures in order to accommodate that. Not knowing the inside administration of the Ontario Municipal Board, but given that it has a large backlog now and municipalities experience significant delays before they can get cases heard, if it was going to attempt to only use those tools, there would be a problem. But their indication to us is that they are going to use those alternative methods to achieve the desired result.

**Mr Poirier:** Do you have any estimate of the extra cost that could entail per year?

**Hon Mr Pilkey:** I do not know what that cost will be exactly, but there were some estimates at some point in time in some printed material that was circulated or obtained, in the \$1-million range. There was a question in the House similar to that, and I responded at the time that when you look at the \$13-billion to \$15-billion marketplace in tourism, that amount of money, when weighed against the kind of business and sales and taxes and all the rest that would be generated in that context, would be an incidental expense. I am not saying that \$1 million is incidental. If I had that, I would not be before the committee today. I would be elsewhere. But it would be incidental when marked against the proceeds that will be achieved as a result of the tourism exemptions.

**Mr Poirier:** I have many more questions, but thank you for all those answers.

**Mr Sorbara:** Mr Chairman, on a point of order: The minister and the government are playing fast and loose with this committee. The minister said, if I might paraphrase, "Well, there might be some more amendments." I do not see how we can proceed on clause-by-clause until we know what the government's position is.

I do not know what standing order this comes out of, and I do not know what he is going to discuss in cabinet tomorrow, and I do not know what they discussed in caucus today, but a month ago the government put this off because it wanted to have further discussions. A motion

was brought to this committee asking us to put it off indefinitely and we agreed because we thought that maybe the government was discussing a few things. It is obvious from the answers of the minister that they are still discussing some things, that maybe they will allow Christmas shopping between Thanksgiving and Christmas. They are not going to deal with the drugstore issue, but maybe they will agree that music stores are unfairly discriminated against.

The whole tradition of committees of this place is that we get down to the business of clause-by-clause when the position of each of the three parties, including the government party, is crystallized. I have told the Vice-Chair and the whip of this committee on numerous occasions that I would be willing to proceed on clause-by-clause when the government's position is finally determined and it is crystallized, but for the minister to come here today and say, "Well, maybe there will be some more amendments," makes it very difficult to proceed. I just do not see how we can do it.

**Mr Morrow:** What is wrong with being honest?

**Mr Sorbara:** Mark Morrow says, "What is wrong with being honest?" I appreciate honesty, but why do we not just stop for a while until the government makes up its mind?

**Mr Morrow:** The taxpayers want us to proceed with this legislation.

1630

**Mr Sorbara:** I accept that. They are allowed to bring forward a common pause day, but do you not understand what a difficult predicament that puts us in? I want to level with you, Mr Chairman. I would be willing to proceed through the four sections of this bill in a matter of an hour or two if the government indicated that it would bring forward certain amendments. I would deal with it even more quickly if the government indicated it was prepared to support some of our amendments or some of the third party's amendments. But to ask us to proceed, after the minister has testified here that he is not sure yet whether further amendments are going to be brought forward, simply ignores the way in which a committee like this can proceed expeditiously.

I know the clerk is telling you that this is not a point of order. I am just asking you to indulge me for a moment. I want to put it on the record.

**The Chair:** All I can say right now is, thank you for your point of view. You do not have a point of order. If any amendments are forthcoming, I imagine they will be done expeditiously. Right now we are still taking questions on the minister's opening statements.

**Mr Harnick:** I recall reading that there would be 157 more people hired by the Ontario Municipal Board in order to handle the anticipated number of appeals. Is there some truth to that figure that you are aware of?

**Hon Mr Pilkey:** I am not aware of that figure at all. I do not know that figure. I have not heard that figure. It would be my impression that the initial volume of municipal bylaw exemptions would probably be dealt with very soon after the passage of the legislation and the bulk of them would soon dissipate. The number that would be coming through would be rather small. I suspect they will have



quite a mouthful in the beginning and they will have to gear up to deal with that, but once that is cleared, I doubt whether this would stand as much of a problem.

**Mr Harnick:** Have you any idea, in studies you have done, how many appeals there are likely to be, how many thousands of them or hundreds of them there are likely to be?

**Hon Mr Pilkey:** No, I do not. There has been a suggestion from some historical data that less than 150 municipal bylaws have been passed over the past 16 years on the Retail Business Holiday Act. If it is in keeping with that, it will not be a problem. As I indicated, the board will deal with whatever number there are, but it is my personal belief that after a reasonably short time the volume will be a non-issue.

**Mr Harnick:** I gather from what you are telling me that you anticipate very few municipalities will avail themselves of the opportunity to seek an exemption. How do you know that?

**Hon Mr Pilkey:** I do not know that. All I know is that it is very important that those exemptions or appeals to municipal bylaw exemptions be heard promptly. It is necessary to the prompt and efficient operation of the tourism industry in Ontario. The board has indicated to us that it will use its best efforts, quite apart from the normal stream, to deal with them within 90 days. I believe they should be supplied the resources to do just that. I am being repetitive, but I believe there may be a sudden rush of them in the beginning that will taper off to a very minimal number subsequently.

**Mr Harnick:** I am glad to hear you are concerned about having those appeals heard expeditiously. When the legislation is challenged under the charter, which it will be, will you then ensure that you will expedite an appeal to the Court of Appeal so we can have this legislation determined without forcing litigants to go through years of preliminary decisions until they get to the Court of Appeal or the Supreme Court of Canada?

**Hon Mr Pilkey:** I do not feel equipped to respond to that question. I have counsel present if that would help clarify it. If it is a judgement of a political nature, I am sorry, I would have to defer until I could review that question. I could not stop anybody from taking action.

**Mr Harnick:** I am asking if you would help someone so that you could get an appeal about this legislation. Without question, there are going to be charter challenges to it.

**Hon Mr Pilkey:** Would I help somebody who is appealing against our legislation? No.

**Mr Harnick:** No, I am not asking whether you would help them, but would you ensure that the appeal was expedited as fast as possible so we could see whether it was constitutional or not? Are you going to make a litigant start out in the trial courts and then have an appeal from that decision to the Court of Appeal and then another appeal from that decision to the Supreme Court of Canada, or will you just refer it, which the Attorney General could and should do and certainly would do if it was your recommendation?

**Hon Mr Pilkey:** I think it would go through the normal process. But the premise we are operating from is that this bill is in fact constitutional. I think the times it has been tested, it has stood the test.

**Mr Sorbara:** It has never been tested.

**Hon Mr Pilkey:** The times it has been to court.

**Mr Sorbara:** Your bill has never been tested.

**Mr Harnick:** What consultations did you undertake to determine that Sunday would be the preferred common pause day of this government?

**Hon Mr Pilkey:** As I indicated, when the bill was initially brought before the House it was under the previous minister. I am not aware of what determinations were taken at that particular time. However, when I was before the committee previously I believe Mr Kwinter or one of the other members asked me a similar question and I responded that traditionally Sunday has been the common pause day in this province and that is the day it would mean, in my estimation.

**Mr Harnick:** So it is the government's position that you are going to maintain the status quo of the Christian majority in terms of the common pause day.

**Hon Mr Pilkey:** I am not saying it is religious. I just think that is the majority common day.

**Mr Harnick:** The majority of whom?

**Hon Mr Pilkey:** Of the citizens of Ontario.

**Mr Harnick:** On what basis do you say it is the majority? If it is not religion, what other area makes them the majority stakeholders?

**Hon Mr Pilkey:** I can only offer you the explanation, on a personal basis, that I have been a resident of this province for 46 years and, as far as I know, traditionally it has been Sunday.

**Mr Harnick:** But traditionally based on what? Is it traditionally because that is the day most people go to church, or is it traditionally because that is the day most people go to ball games, or is it traditionally because that is the day most people go to the movie theatre? I do not know why you are afraid to give me the real answer—because the tradition is based on a religious tradition. I do not know why you are afraid to say that. I do not know what other tradition there is that makes Sunday a special day.

**Hon Mr Pilkey:** I guess everyone can put his own interpretation on it. School is out on Sunday. It is a day that traditionally people have spent for their leisure activities with their family or pursued individual pursuits. You are asking me as a lifelong citizen of Ontario what is their traditional day. The answer is obvious: Sunday.

**Mr Harnick:** Saturday people do not go to school, and probably the vast majority of people do not work. So you have Saturday or Sunday as a choice, and for some reason you do not wish to acknowledge—you are the NDP minister and all of a sudden you are saying "personally." I do not care what your opinion is personally; I care about what your opinion is as a member of the government representing the Ministry of the Solicitor General, because you are the minister. What you care about personally is of no interest to me whatsoever and none of my business, but as minister it is something that interests me. I do not know why, on the basis of the criteria you laid out, you picked Sunday instead of Saturday.



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**Hon Mr Pilkey:** I will not repeat my answer and you did not want to hear my personal answer. The government position is identical to what I offered as my own. I do not accept either that there are not an awful lot more people working in retail stores on Saturday in Ontario than there ever were on Sunday. I do not have the statistical proof, but just by actual observation I think everyone would agree that your point is not well taken.

**Mr Harnick:** You certainly have not convinced me about what tradition it is you are referring to. I do not know why you are reluctant to say it is the religious tradition of the majority, because that is obviously what your answer is except you are couching it in terms of not wanting to offend minorities. Let me tell you that the Christian majority is something that I think communities have respect for, but choosing Sunday shows a total lack of respect for the minorities in this province if you are looking for an honest pause day. The reality is that you cannot find an honest pause day unless you take religion out of it and I do not think you can do that.

**Hon Mr Pilkey:** All I can add is that my understanding is that the legislation has been upheld to be secular; in other words, not religious. I appreciate everyone's entitlement to his own view, but just because that is not my answer and it is not the answer the member likes he should not attempt to substitute his opinion for mine. I am trying to be fair about that.

**The Chair:** One last questioner, Mr Fletcher, and then we will proceed to the opening statement by the Liberals.

**Mr Fletcher:** Thank you, Mr Pilkey, for being here today. Can you make legislation that is going to appease every religious group, every ethnic group, every group that makes up Ontario? Is this law going to do that?

**Hon Mr Pilkey:** I have not found a piece of legislation that went through this House that ever did that on any topic, so it certainly would be very difficult. As I said when I answered Mr Poirier, I acknowledge the point he made and I gave an explanation as best one can. Short of not having a common pause day at all I do not know how one could address that. But in a circumstance as imperfect as it is, it is designed to deal with the majority who traditionally would like to have a common pause day in this province. It has traditionally been Sunday.

**Mr Fletcher:** As far as the formulation of the amendments is concerned and after listening to what Mr Sorbara was saying, as far as the procedure and the process are concerned, we came, we went back to discuss it again, we discussed it with caucus, discussed it with cabinet and discussed it with the committee. If I remember correctly, there have been four or five meetings where this has been discussed. As far as you are concerned, does the government have a position now?

**Hon Mr Pilkey:** Yes. The government's amendments—and this is what I said earlier—are properly before the committee. If an occasion arises that there would happen to be, and I am not saying there would or would not, any additional amendments, they will properly be served

to the Clerk, distributed with the appropriate advance time to the members and hopefully dealt with, all according to the rules and regulations.

**The Chair:** Opening statement now by the Liberal caucus?

**Mr Morrow:** Just on a point, please. With the indulgence of my friends across the floor, would it now be okay that we move the parliamentary assistant, Gord Mills, to the front of the room to answer questions during clause-by-clause?

**Mr Fletcher:** It sounds like a good idea to me too.

**The Chair:** If he chooses to. The minister will be remaining, though. Opening statement by the Liberal caucus, Mr Sorbara.

**Mr Sorbara:** Mr Chairman, I am going to keep my remarks limited to about 10 minutes on this opening statement. I am required to advise you, sir, that my statements and the debate on clause-by-clause consideration of Bill 115 are going to be lengthy in the extreme. I want to tell you why that is. I am going to personally dedicate myself to making this bill the most difficult bill that the government has to pass in this session, and I want to tell you why that is. In part, it is because of the content of the bill. It is a bad bill. It flies in the face of what the people of Ontario want and what they expect from a New Democratic Party government, not a party interested in maintaining all the good traditions but a new, reformist, New Democratic Party government.

But that is just half of it, and if it were just that, I think we should just get on with it and pass this damnable piece of legislation. But what has so irritated me is the way in which the government and the members of this committee and, I am sorry to say, the minister have conducted themselves in respect of how we proceed here.

We were prepared a month and a week ago to begin clause-by-clause consideration and we have been coming back here week after week. Some people decided to forgo a holiday in that week before the Legislature resumed to come and consider clause-by-clause, and the government said, "Well, let's just put it off indefinitely."

We are asked now to begin clause-by-clause consideration of a bill, and the government's position has not firmed up. "We don't know," the minister said, "whether there are going to be any further amendments." I have said to the minister privately, I have said to the Vice-Chair privately, I have said to the parliamentary assistant privately, "We are prepared to move ahead on this bill when we know what your position is." Yesterday we were forced to end debate because of a closure motion. A week ago the government moved a motion to adjourn without any debate at all. Today the minister says, "Well, there might be some more amendments."

I invite you to visit the standing orders, which are designed to allow committees to proceed with consideration once the three parties have a view on the matter. I do not know what you talked about in caucus today and I do not know what you talked about in committee, but I think it is just a matter of pure and simple respect not to force members into clause-by-clause consideration when the position has not crystallized. We are not arguing here on behalf of



some interest group. We are trying to formulate public policy. We are trying to pass a law that will accommodate the people of Ontario. The United Food and Commercial Workers' interest is represented in the amendment. The interest of the lobby groups who say "We must keep Sunday very closed" is represented in the bill itself. But our job here as legislators is to try to improve public policy. How in the world are we supposed to go ahead and do that when the government's position is not even quite clear yet?

I am going to save until later a rather more thorough examination of what is wrong with this bill, but in my opening remarks I just want to tell the minister that all of the rhetoric about this not being a bill based on religion—he said today it is not even a bill dealing with Sunday shopping, it is about retail workers and Sunday working—is about the stupidest, I am sorry to say, kind of argument that could be made in this committee at this point.

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Have a look at the bill. I invite everyone to read the final clause of the bill. It says clearly that no retail worker—this is the group we are trying to protect—who does not want to work on Sunday has to work on Sunday. There is pretty stiff protection in here, and the minister is providing an amendment to make it even stiffer. He put it in his statement. By the way, I will tell the minister that when a minister comes and makes a statement before this committee of this sort, as a matter of courtesy copies of that statement are distributed to the lowly members of the committee. It is a tradition. It is protocol, but you do not need to do it.

But you said in your statement, Minister, that this is about retail workers, that we do not want retail workers to have to work on Sunday. So you put in the bill an absolute prohibition prohibiting under any circumstances whatsoever any retail worker from having to work on Sunday. I would ask the minister and the committee what the rest of the bill is all about. Why are we closing the stores if the bill intends to protect the retail workers and the retail workers are fully protected? What is the rest of the bill about? You and your members say: "It's about Sunday work. We don't want the workers to have to work on Sunday." You have done that—I repeat, thorough, absolute, airtight legal protection—and yet all the stores that just might want to open for economic reasons or for reasons of culture or for reasons of religion or for any other reason whatever are forced to close.

I just want to tell the minister that it does not make any sense. It is like saying to someone who does not want to participate in a race that the best thing to do is to call off the race. Yet in your instance, to carry through with the analogy, you have already told the participants in the race that they are going to win the race, they do not have to work; there can be no retaliation whatever.

I think that is why people have such disrespect and such cynicism for politicians. You stand up on your high horse and you say, "We're going to protect retail workers," and so you protect retail workers, and then in addition to protecting retail workers you say all the stores have to close where they would have worked anyway. What is that all about? It is like saying that in order to ensure the health

and safety of workers at the workplace we are going to close the workplace down.

Why are we doing this? Why are we kidding ourselves about what we are really trying to do here? At least if the government would stand up and say there is still a little bit of political benefit to be gained by playing to that audience, the Gerald Vandezandes of the world and the others who think we should not allow people to buy things on Sunday when they want to buy things on Sunday—why not just stand up and admit that the government is playing to that audience, notwithstanding that it is unenforceable and that stores will open because the marketplace will dictate that stores will open? Why not simply stand up and acknowledge that this is what you are doing?

It is so hypocritical to say that you are protecting retail workers—and, by the way, not the retail workers who work in this wonderfully different world called tourism, whatever that is; not those retail workers. They are second-class retail workers. They do not deserve the protection of this act, except, you know what? They do not have to work either on Sunday. They can refuse to work, but their stores are going to open, so who really is second class? What about the retail worker who wants to work at the A&P on Sunday and does not get the opportunity, whereas the retail worker in the tourist shop gets an opportunity to work?

If you were true to your faith, if you were true to your rhetoric, if you were true to your principles, you would bring forward a law protecting retail workers. What does this bill do? It does something completely different. It flies in the face of the fact that, community by community, there is a standard that can be established as to whether stores will open or close and to what extent stores will open or close, not based on some nonsensical, unenforceable tourism criteria but on the realities of what happens in the community.

Once we get into clause-by-clause I am going to tell you about how poorly this is going to work. But let me remind the other members of the committee—the minister is already committed to all of this—that when you pass this bill, every store that is now authorized to open on Sunday in Windsor, in a tough market, is going to have to close. Every store now open on Sunday in Sault Ste Marie, a tough market, is going to have to close. Will we get a common pause day there? Are you kidding? The trouble in Windsor and Sault Ste Marie is that workers do not have a common pause day; they have a common pause week and a common pause month and a common pause year because there is no work there.

So what do we get? We get a government that says: "All the stores should be closed. That way we'll protect the retail workers and we'll let the businesses go out of business; we'll let people who otherwise could maybe just eke out a living wallow in their common pause day."

It is nonsense. Do you know how bad a piece of nonsense it is? This bill says—read it right here—the governments that are going to be considering these things, the municipalities, when considering a bylaw have to take into consideration—"into account" to quote the bill—the principle that holidays should be maintained as common pause days. The government does not have the courtesy, the guts or the



intelligence to tell the municipalities what a common pause day is. They will not define it in the act; there is no definition. The municipalities are going to sit there and say: "Should this store open? Should this store close? I don't know. We've got to take into consideration the New Democrats' common pause day. And what is that? We don't know."

There is no common pause day for Inco; they are going to manufacture nickel. There is no common pause day for Stelco; they are going to manufacture steel. There is no common pause day for nurses; they are going to be with their patients. There is no common pause day for flight attendants; they are going to work on aircraft. There is no common pause day for people who work in tourist shops; they are going to be open. What is this common pause day? Would someone from the government tell us what a common pause day is in statutory form?

This bill is so badly crafted and so poorly thought out as to make it unbelievable. But what is worse, I will tell my friend Mr Mills, who is now the parliamentary assistant and is going to be carrying it, is the way you have treated us. You have treated us badly. You have invoked closure on us on at least two occasions, I believe. You refuse and the minister himself refuses to tell us what sections he is considering for further amendment, yet you force us into clause-by-clause.

I want to make it perfectly clear to all of you that to the extent that you affront and insult opposition members you will have difficulty passing legislation. This thing could have been entirely different. Your Vice-Chair, parliamentary assistant or the minister himself could have said, "Take off your Monday and Tuesday afternoons or go on with the advocacy acts until we have come to a final conclusion," but we have been jerked around and jerked around. One day we are told, "We're going to proceed." The next day we are told, "There are further amendments in the works, so stand down those sections."

**Mr Fletcher:** Baloney. You wouldn't let us.

**Mr Sorbara:** My friend the member for Guelph says "Baloney." You ask Morrow whether it is baloney. You ask the minister whether it is baloney. Yesterday I was told we could stand down sections because there were other amendments coming. Is that baloney?

**Mr Morrow:** On a point of order, Mr Chair: We spent over two and a half days in here on a Liberal amendment to my motion, so who is doing the stalling?

**The Chair:** Thank you, Mr Morrow. You do not have a point of order.

**Mr Sorbara:** My time is more than expended. I said I would speak for 10 minutes; it is now 15. I just want to tell the government that if it expects expeditious passage of this bill, it ought to change the style—and I hope the substance, but particularly the style—in which it treats opposition members. We are perfectly prepared to proceed on clause-by-clause if the government ever identifies what its final position is on this bill. You could bring forward some amendments which would allow economic opportunity or economic development to be a criterion. You could pass amendments that would satisfy the dilemma of certain small

sectors of the retail economy, like music stores and larger drugstores. You could bring forward amendments that would acknowledge that we need different strokes for different folks around Ontario because of different economic circumstances. You could treat the real substance of the issue and, while you are at it, you could change the style in which you approach opposition members and their concern.

We are not speaking and delaying here for the good of our health. We think there could be significantly better public policy on this issue. We appreciate that you won the election and you have now a right to proceed with trying to implement some sort of common pause day. You campaigned on it and that is fair. In committee we could have had the opportunity to shape and mould. Every time I have talked to members about this they always refer me to the minister, they always refer me to someone else. Today I was referred to the government House leader. I said, "Are there going to be any amendments?" "Talk to the government House leader."

**Mr Morrow:** That is fair.

**Mr Sorbara:** My friend says that is fair. What does the government House leader have to do with it? Are we going to negotiate amendments based on time allocation? Is it coming to that? Okay. All I am telling you is that three and a half years from now the people of Ontario will remember. In a world that is changing dramatically, in a world where, as was absolutely clear from our public hearings, most of Ontario wanted you to back off and allow them to make their own choices on Sunday, we had a bill based on the negotiated needs and criteria and preferences of the government House leader. No member of this committee from the government side expressed any real interest in dealing with the real substance. On every occasion that we proposed substantive amendments we were told to see the government House leader.

Mr Chairman, I move adjournment of this debate.

**The Chair:** All in favour of adjournment?

**Mr Sorbara:** I call for a 20-minute bell.

**The Chair:** We have a 20-minute division.

The committee recessed at 1704.

1725

**The Chair:** All those in favour of adjournment? Opposed?

Motion negatived.

**The Chair:** Carry on with opening statements from the Progressive Conservative caucus now.

**Mr Carr:** I was going to say earlier here, and I will not change my remarks, that one of the things people said happens as a result of committees is that people come closer together. I think for those who spent time this summer that was the case, even though we had that little dust-up at the end which may have changed it a little bit. Personally, I think it was a good opportunity, my first as a member, to spend an extended period travelling together across the province. It was an enjoyable process.

Having said that, like Mr Sorbara before me, the difficulty I have had in this entire process is that we had a piece of legislation that was badly flawed in the beginning, and all



of us hoped that as a result of the hearings in the summer there would be an improvement.

What we have with the amendments, as I look through them, is that they have actually taken a bad bill and made it worse. I had hoped to introduce a motion to express my feelings but the clerk informs me it would be ruled out of order. But I will quote from it because I think it outlines my feelings on this bill. The bill as it stands, even with these amendments, is so flawed that I believe it will not be able to be implemented, applied and enforced consistently and fairly. We heard this during a lot of the testimony and, as people will reflect and remember, people on both sides of the issue did not like it. Those who wanted Sunday shopping were opposed to this and had a tremendous number of recommendations, as did the other side. When we look at it, the government did very little other than to add more bureaucracy to it, like the Ontario Municipal Board.

As I was going to point out in the motion, the bill was defective in terms of design. It was originally mistaken in terms of its intent and there is no way this piece of legislation can be redeemed through the piecemeal amendment process that we are looking at. Taking a look at the amendments, nothing has changed.

As I pointed out many times in our deliberations, the bill did not have and has not had support among the population. People on both sides of the issue were opposed to it, and I think any objective individual will know that. Everyone on both sides of the issue said it was flawed for different reasons. Then we have the new amendments that came out on behalf of the government, which did very little to change that.

You will see where we are coming from when you get a chance to go through our amendments. We are taking a look at it and saying, "Okay, the first thing we should do with this piece of legislation is take it back and start all over again." What we are attempting to do in some of our motions is take this bad legislation and improve it.

As such, the fundamental motion we will be speaking to is with regard to the tourism criteria. I suspect our motion will not pass. We had hoped to have it entrenched in the legislation, for a lot of different reasons. In the past I have talked about how Mr Kormos in opposition and Mr Phillips went across the province on the Police Services Act and talked continually about how things should not be left to regulations, particularly when it is so fundamental to the bill as these tourism criteria are. We would like to see that entrenched in the legislation. That will not happen now because you have a committee that is going to take a look at it. Of course, that was what the United Food and Commercial Workers called for way back.

When you look at our amendments, also, the square footage will be taken out as a result. The basic feeling is, if you are going to have something set up for a tourism exemption, it should be a tourist area, whether it is 10 square feet or 7,800 square feet.

I note that the new chair of the tourism advisory group, when he made his presentation with the union—it was Hamilton—said that the one area where they differ is, "If you are going to proceed, then we do not want to have the square footage in there. We do not want Sunday shopping"—to

paraphrase them—"but if it does come in, we do not want to have the restrictions." I think that is one of the areas where some of the court challenges will come in terms of discrimination between the square footage.

To my horror, when I found the government's amendments coming through, the Ontario Municipal Board was going to be used. As I pointed out to the minister in my questioning last week, in his statement that was to be made on September 30, the costs are in the back portion of the question-and-answer, and it says they will spend about \$1 million to implement that. The problem is that they are resources that could better be used in other areas, and we have all heard about the backlogs at the Ontario Municipal Board.

As well, I had the pleasure, as a new MPP, of spending my first day at a rent review hearing this morning. We sometimes laugh at the delays we have here. It started at 10 o'clock in the morning. It adjourned at 11:45 and the only thing that had been decided—well, it had not been decided at 11:45—was that they did not know if they were even going to continue that day. They spent whatever amount of time debating on whether there should be an adjournment because one of the lawyers was not there, and they went back and forth.

At something that is put together very simply, like the rent board, where we say, "We're going to put this mechanism in place where disputes can be settled," they spend literally all morning deciding whether they are going to even proceed. In that respect it is not unlike what sometimes happens in the Legislature and some of the committees.

We talk about putting together another level of bureaucracy to go to and, as you know, this was something that was put in by a couple of the groups as being another hurdle to those who want to remain open. The feeling is that if you put up another hurdle in there, another appeal process, it will make it more difficult to go through.

The advisory group that has been struck was another recommendation that came in. As I alluded to in my questions to Mr Pilkey, the problem I have is that, first of all, the appeal process as well as the advisory group were things that were called for by the United Food and Commercial Workers. It was interesting to note their presentation, which was done by Mr Jerry Clifford, at page 6. I do not know the date it was done, but I guess Peterborough is where Jerry did it. Then you look at the government motion. The wording is identical. The only word that has been changed has been the Supreme Court versus the Ontario Court. If you look at it, the wording is literally identical. I checked with my colleague who is a lawyer, and they did not even have, I guess, the smarts to change it a little bit. The wording is identical, the government motion as well as the United Food and Commercial Workers' wording, so somebody just lifted it.

We all know what happened in Kingston where the United Food and Commercial Workers said it was a very serious matter and they talked about in the executive withholding money to the NDP. They voted against that, but the fact is, it was now out on the table. Now what we have is a particular group saying, "If we don't get what we want, we're not going to give the money." Then the government



turns around and its motion is identical in the wording. Then they say to us, "No, there was nothing that was"—

**Interjection:** Oh, come on.

**Mr Carr:** The concern people will have is that during that period of time people were saying, "If you don't do what we want, we might withhold money," and then the amendment that comes in is identical, exhibit A and exhibit B, if you will.

**Mr Morrow:** Is this a court of law now or something?

**Mr Carr:** So the perception would be, if somebody was to look at it—and I guess the government could argue that the two opposition parties might not look at it objectively, but to the public out there that knows the story, when you lay it in front of them and say, "Here's a group that threatened to withhold money"—and then what happens? The amendment that they bring in, they do not even have the smarts to change the wording a little bit other than the—

**Mr Sorbara:** The conclusion is irresistible.

**Mr Carr:** This committee was the one that looked at the conflict of interest when the Premier came in and sat in that chair, unless it was upstairs, in front of us and said: "What we're talking about is the perception of the public. That is what is important: the perception of the public."

**Mr Fletcher:** On a point of order, Mr Chair: The statement made by the member opposite is not exactly the way it was when he says they threatened to withhold money from what we were doing.

**Mr Harnick:** That is not a point of order.

**Mr Fletcher:** I think if he remembers correctly, the motion was put and then it was lost.

**The Chair:** You do not have a point of order, Mr Fletcher.

**Mr Carr:** It was lost, and we had a tremendous amount of debate. As I mentioned earlier, I have two letters in to the Attorney General asking his office to take a look at it with the wording that was there. I sent to him copies of the Hansard to take a look at it. Not being a lawyer, I think that is the way to proceed. I also sent a letter to the Speaker, but I understand that probably unless the committee requested—and as you know, the vote was such that the government carried the day on that particular vote, so I do not expect the Speaker to do anything with it.

The unfortunate thing is, getting back to where I was, that the Premier, during the conflict-of-interest discussions in front of this committee, said that what we are talking about is the perception of the public. That is what we have to deal with; that is why we are coming in with the most draconian piece of legislation in terms of conflict of interest—because we want the perception. Then they turn around on another piece of legislation and make it so simple that the average person looks at it and says, "Well, maybe there's something here." I will leave that up to the judgement of the public and to the Attorney General to make the ruling on that.

Unfortunately, the problem we have as we sit here today is that everything that was asked for in terms of one particular group has been brought in, and I submit that it

creates a very serious problem for this government. It was kind of ironic, of course, that the last campaign was run by the Premier of the day accusing the previous government of having close ties with special interest groups, and yet we have a situation where people came before a committee and basically talked about withholding funds, and then we see that the amendments that come in are identical to what they asked for. I think the Premier is going to have to reflect on that particularly. We looked at the conflict of interest in February of last year, I believe it was, so a year later I guess his views on what the perception is might be changed, although I suspect the public's view of him in that regard would have changed in a year as well. That was before the numerous problems.

To put it in terms of what my feeling was when we put something together, it was a tremendous challenge because we had heard from both sides how they did not like this piece of legislation. We had a situation where we were then called on as an opposition party to try and make amendments that would improve a bill that I honestly, truly believe was flawed and could not be put together in terms of this piecemeal approach.

Then, to my horror, when some of the government amendments came in, instead of going in one direction and improving the bill they took another step backwards. I remember the day it came in. I got the first advance copies of it going way back. Through that period of time, everybody on both sides of the issue said, and we heard time and time again: "By putting it to the municipalities you're creating problems. The government should decide." I could not believe that instead of streamlining the process and making it easier, regardless of what happens, wherever the decision is, the municipalities will decide. What they have attempted to do is put another hurdle in the way.

We questioned the Solicitor General regarding what the cost will be. Of course, I got the answer saying that about \$1 million is what they are looking at. I guess we really will not know.

1740

The fact of the matter is, it is those resources at a period of time when we have the largest increase in crime in the history of Ontario and we are up about 38% right across the province, not just in Metro, although we focus there. We are putting our resources into an Ontario Municipal Board hearing at a time when courts are literally springing criminals for charges as serious as assault and drunk driving.

When the public takes a look at the process, they say that crime in the streets is now the biggest concern to them. In my particular area over the summer period, crime in the streets has become probably the single biggest issue, and we have unfortunately had the murders of the two girls out in Halton.

At Coronation Park in my riding, we had 4,000 people out for Take Back the Night. You could not get 4,000 people to come out for any other reason except for something very important like this. We had 4,000 people out, and then we turn around and say we are going spend \$1 million to take a look at prosecuting people because they want to open on Sunday. I think even those people who



want the stores to close would say that somehow, somewhere the priorities have been led astray in this province.

Having said that, I think the public is also going to take a look at it and say that this government made certain commitments to various groups. They have had to back away from some of them and now they are going to attempt to put some of the things in to keep some of those groups that got them elected happy.

I say to the people on the other side, regardless of what you say about the opposition parties, when you have pieces of legislation identical to a proposal from a group which said, "We are going to withhold funds unless we get what we want," and then you turn around and put the amendment in there word for word, can you wonder why the opposition parties and the public are taking a look at you and saying there has been no change in the process of government?

All we have done over the last period of time is change the interest groups being dealt with. The perception of this particular Premier, when he was so critical of the last government—then he turns around and does the exact same thing, only this time we have a different special interest group. It is a very serious problem you have, because the perception out there is that groups that make presentations and make these threats can get their way at the end of the day.

I know the Solicitor General is here and listening to that. I think it is a very serious concern. I suspect he will be able to go back with his officials tonight and take a look at some of the concerns raised at that meeting. I can tell you right here and now, it was August 13. You might not have been aware of that. I think that might have even been the previous Solicitor General. The reason I know it was August 13 is that it was in Kingston and the following day was my birthday, so I remember the date very well.

**Mr Harnick:** The cabinet had already been shuffled.

**Hon Mr Pilkey:** How old are you?

**Mr Carr:** I'm aging fast, believe me, in this business.

The concern we have is that a piece of legislation that came in under the previous Solicitor General was rushed through. I have a tremendous amount of sympathy towards the various officials who were from the Ministry of Tourism and Recreation and from the Solicitor General's office. I suspect when the legal people get their directions their heads must spin sometimes because they are the ones who ultimately have to put this together and make it look like

there is some semblance of order. They may have succeeded in the past, but this time they did not, because the general public and everybody is saying that this whole process has been one defective from the very beginning.

It was interesting to remember that the Premier said in the last throne speech that when they make mistakes they will admit them and try to correct them to the best of their ability. What should happen with this piece of legislation is you should say: "We have made some mistakes. We are not going to proceed with it until this group gets together with the tourism criteria. We are not going to put it in the regulations where they can be changed overnight at the whim of some individual, as was done with the oath to the Queen. We realize that is fundamental to the bill. We realize we may have rushed it for a lot of good reasons because we wanted to get the legislation in. There was a lot of good intent originally, but as a result of that we have had problems with it. We are going to take a step back. We are going to get this group together."

Something as fundamental as the tourism criteria should be done right. If you believe in it, it should be entrenched in the legislation so it cannot be changed. You are going to ask this group of individuals to put something together and spend a great deal of time hammering something out and it is going to be very difficult to do. I think everybody said that. The tourism criteria is the key to this bill. By putting it in the regulations you are saying to these people, "You could put it together, but tomorrow, for whatever reason, either to stiffen the regulations or to loosen them, depending on what is needed, we do not need to follow your advice."

They are the two particular amendments we will be moving. When we get to them, I will get a chance to speak a little bit further on them.

In conclusion, I would say that, overall, this piece of legislation was flawed from the beginning. The amendments I see here today make it worse. It is now about 5:45. Hopefully, we will be able to start fresh next Monday on these particular amendments. I have taken a little bit more time than I wanted to, so I would move an adjournment until next Monday.

**The Chair:** Mr Carr has moved adjournment until next Monday. Because of the lateness, we will adjourn until Monday.

The committee adjourned at 1746.

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First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 28 October 1991

# Journal des débats (Hansard)

Le lundi 28 octobre 1991

## Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 28 October 1991

The committee met at 1536 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

LOI DE 1991

### MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

Section/article 1:

**The Chair:** I would like to call the standing committee on administration of justice to order. We will now be proceeding with clause-by-clause. Each of the caucuses has had its opening statement. We will proceed starting with section 1 and work our way through. Unless there is a unanimous consent to stand one down, we will proceed with them each in order.

**Mr Sorbara:** What I propose to do today is stand down the first two amendments, if we are at the point now of discussing where we are with amendments. Are we there?

**The Chair:** Yes, we are.

**Mr Sorbara:** I propose to stand down the first two amendments, the first one being a Liberal amendment and the second one being a Liberal amendment. I ask the indulgence of the committee to accept having those stood down. I would like to begin by moving the third amendment, if you are ready for that.

**The Chair:** Do we have unanimous consent to stand down numbers one and two? Agreed. We will proceed to number three.

Mr Sorbara moves that subsection 4(1) of the act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

"(1) Despite section 2, the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism, for economic development purposes or for any other purpose prescribed by the regulations made under this section."

**Mr Sorbara:** Mr Chairman, what I propose to do is address the committee on the purpose of this amendment and, within the context of this amendment, add a few remarks about where we have been in considering Bill 115 and where we are going from here.

Might I just add that my colleagues Mr Poirier, the member for Prescott and Russell; Mr Chiarelli, the member for Ottawa West, and Mr Callahan, the member for Brampton South, who will be participating in the committee for some time, propose to make some remarks on this section as well. I am not sure about the government members. Mr Harnick always has an interesting word or two to say during the deliberations of this bill. I expect he will have something to say on this one as well.

Make up your list and do not allow my friend Mr Morrow to get the floor to move closure, because I am sure that under those circumstances, given that we have just started, you would not—

**The Chair:** Each of the members will be noted as recognized.

**Mr Sorbara:** Good. I want to tell members that the process that has characterized these hearings thus far has often, I think, been a good, sound and solid process. We had four weeks of very fruitful public hearings. I regret the government members did not seem to want to argue as forcefully as they could for amendments that would have reflected what we heard in those public hearings, but that is for them to decide.

I think frankly that the process degenerated a little bit back on September 16 when the government moved for an indefinite postponement of clause-by-clause consideration without telling us why that was. That started to poison these hearings and this consideration of Bill 115 just a little bit. We then saw a couple of closure motions as a result, and that poisoned the process even further.

I only mention that to tell you that, just as the old NDP opposition is learning how to become a government, we who used to be in government are learning how to become an opposition. One of the things we have learned pretty quickly is that if you treat the opposition capriciously and arbitrarily, you will have, inevitably, a far more difficult time conducting the business you want to conduct.

Let me just give you one example from a completely other portfolio and another minister. Last Thursday, Ruth Grier introduced a bill to create the Interim Waste Authority Ltd for the province of Ontario and for the greater Toronto area. It is unprecedented that a minister would introduce such an important piece of legislation and not make a statement in the House during ministerial statements. I want to reiterate that for my friends on the government side, who may well be sitting on the committee that considers that bill. It will have a much more difficult time passing, simply by virtue of the affront the minister displayed to Parliament and particularly to the opposition last Thursday. We were insulted. You know how important these environmental issues are to us, and for those of us who have major dumps in our ridings, this is crucial. This is life or death for our communities. People in our communities

feel very strongly about it. When the minister introduces a major piece of legislation and fails to respect the right of the opposition to a brief, five-minute response—she could have spoken for 20 minutes; there were no other statements that day—it creates almost a guarantee that the opposition is going to feel offended and it is going to make it more difficult to pass that bill.

Similarly here, when the government started to act arbitrarily, in our view, this committee started to work not quite as well as it had. We hope that has turned around now and we can get on with the business of considering the bill in clause-by-clause in a timely fashion. I want to advise you, sir, that I do not think we will get very far today because—

**Mrs Mathysen:** You are going to be a bore.

**Mr Sorbara:** My friend Mrs Mathysen says I am going to be a bore. No, I am not going to be a bore; I am just going to let her know that, as with all these sorts of matters, amendments proposed by governments have to be caucused. We have to talk about these amendments tomorrow in our caucus to develop a collective or caucus view as to what approach we want to take to the bill, given these amendments.

We are already on the record, and our view will not change, that these amendments assist precious little in making a bad piece of legislation good. Virtually everything we heard during the public hearings on this bill has not been addressed by the government amendments. In fact, the government amendments have made the bill worse, not better.

The amendment I have just moved, we believe, would transform a relatively bad bill into a relatively good bill. In fact, what it would do would be to recreate the so-called local option that the Liberals had, that we had in our Bill 113 in a different form, and we acknowledge that. But what we have seen is that thus far that approach, letting local communities decide for themselves what stores will open and what stores will not, is in the end probably the only safe, the only appropriate—the best—approach to dealing with the question of Sunday shopping.

But I want to go back to what the former minister said during his introduction of this bill and in first and second reading of the bill, and what the present minister, who joins us today for clause-by-clause consideration, has said in respect of Bill 115. Both ministers, the previous minister and the current minister, have argued that this bill is about Sunday work, not about Sunday shopping. That is poppycock.

He also says that this bill brings about a common pause day for the people of Ontario. That is poppycock. This bill has the effect of forcing stores to close on Sunday, most of them, so obviously it is about whether or not stores will be open or closed. That, in my vocabulary and my lexicon, is about Sunday shopping. In fact a very small part of the bill is about Sunday work and we support that part.

You could achieve everything you want to achieve if you really believed what you say about this bill being about Sunday work by simply passing that section. We could abandon the rest of the bill today and get on with

that section and retail workers would have the protection you are proposing to give to them.

The other thing that is being said is that this bill is about a common pause day. For whom? Do nurses take advantage of this bill and book off in the hospitals of this province? Do flight attendants take advantage of this bill and say they do not have to fly today? What about miners and auto workers? What about the people who run the hydro system?

**Mr Poirier:** What about MPPs?

**Mr Sorbara:** What about MPPs, my friend the member for Prescott and Russell says. What about every single worker in this province except a very small sector working in businesses which will be forced to close? They are protected. Not only are they protected, they are doubly protected because the stores they work in cannot open. Even if they want to work, they cannot go to work. Some protection. But if the stores open in contravention of the law, they have the absolute right under our bill to refuse to work on Sunday with full protection of the law.

I say this does not offer anyone a common pause, and you have already protected the workers you say you want to protect. Why not then get off the backs of the shopkeepers of this province, who simply want an opportunity to carry on their businesses at times when people will come to those businesses and do their shopping?

**Ms Carter:** Not in my riding, they will not.

**Mr Sorbara:** My friend the member for Peterborough says “Not in my riding,” and that is the beauty of the law as it exists right now. If the people of Peterborough and their city councillors decide they want to keep the stores closed on Sunday, they can do that. That is called a municipal option and it is actually working.

In Windsor, for example, they say they want the stores to stay open. I am not very surprised they say that in Windsor. The businesses there desperately need that Sunday market. In North Bay they say they want to keep the stores closed, and similarly in Peterborough, and that is possible under the law that exists now.

But I tell my friend Ms Carter from Peterborough that it will not be the case under your bill, because under your bill all the stores in Windsor are going to have to close again, notwithstanding that they desperately need the opportunity to participate in the greater Windsor-Detroit market and catchment area so as to stay alive. This bill is about business and it is about retail business and it is about Sunday shopping.

Let me tell you why I believe so strongly that we ought not to proceed with this bill. I want to take you back to our hearings in North Bay. Sir, if I recall correctly, you may have chaired that meeting. Do you remember, we were flirting with the idea of getting rid of the member for Durham East and we had you on—

Interjections.

**Mr Fletcher:** On a point of order, Mr Chairman: We did not contemplate getting rid of any member. That is a derogatory remark that need not be said in this committee.

**Mr Sorbara:** I want to withdraw that remark. But I will say, sir, that you were there on a trial basis to see



whether or not it would work out and it has worked out and we are glad that you are in the chair. We are delighted.

**The Chair:** I believe I was subbing while the other chair was on vacation.

**Mr Sorbara:** I want to take you to North Bay and remind you of the testimony of the assistant solicitor for the district municipality of Muskoka. I thought it was one of the most insightful analyses of the bill and the problem that we heard during the four weeks we had public hearings. I thought it was articulate, I thought it was thorough and I thought it was insightful, and I am going to refer to that testimony and those submissions.

1550

**Mr Poirier:** Even though he was a lawyer.

**Mr Sorbara:** My friend the member for Prescott and Russell points out that he was also a very competent lawyer, or something like that. He said at the outset of his remarks, and I invite the government members to reflect on this, "Any attempt to categorize business on the basis of class of customer,"—read tourists—"on the basis of product line, on the basis of number of employees just is not workable." The principle the committee should be thinking about is freedom of choice. I do not think that is just a Liberal principle, but we cherish that principle.

Then he went on to explain to the committee that modern governments of the Ontario sort engage really in two basic kinds of activities. The first is the provision of services: health care services, registration services, services of a wide variety. The second general kind of activity that governments engage in is the regulation of conduct: setting rules and regulations as to what can and cannot happen in the jurisdiction.

The Sunday shopping bill is a bill dealing with the regulation of conduct. He said there are four tests to determine whether or not a government should engage in the regulation of conduct. He judged the bill based on whether or not it met this four-part test. The first test was whether or not the conduct regulation being proposed—that is, to close most stores except tourist stores on Sunday—has the general support of the community. I think the polls say this proposal does not have the general support of the community. More and more people are saying shopkeepers and consumers ought to be able to make a free choice as to whether they do or do not shop on Sunday or they do or do not open their stores on Sunday.

The general support of the community is eroding. Let's grant that five years ago, 10 years ago, 20 years ago, yes, there was general support in the community. He says, "Don't get engaged in conduct regulation unless you have the general support of the community," not 100%, but something more than 44% or 30%, which is the case now.

The second test is whether or not measures are understandable and workable. Again, Bill 115 fails in this test of being understandable and workable. It is not workable because there are precious few businesses that are exclusively tourist. We recall that the government previous to the previous government tried to regulate Sunday shopping on the basis of the tourist exemption and it did not work. My God, we knew it did not work when we were in

power, and that is why we brought forward another alternative, which was the opportunity for local communities to set local standards.

Not only that, the bill is also not understandable. It is not understandable to make the differentiation between businesses that pass the threshold test and those that do not. So Bill 115 fails the second part of the test.

The third test he proposed was that the bill be legal within the jurisdiction of the body trying to make the law; that is, it meets several legal requirements and it meets the requirements of our fundamental law, in this case the Charter of Rights. He made an eloquent argument supporting the proposition that this bill discriminates in a way that offends the spirit, if not the letter, of the Charter of Rights.

One of the problems with the amendments that the government is now proposing in respect of December shopping is that it flies in the face of the holidays of a lot of people who do not celebrate Christmas, the people who celebrate Rosh Hashana and the people who celebrate a wide variety of central feasts. They are so offended that the government would choose one month, and it was the Christian month. They are phoning my office and they are going to be phoning your offices as well, so do not think that you have solved the problem by settling on December for a little bit of freedom, and for the rest of the year retailers can try to eke out a living. He says this bill does not meet general legal standards that govern how we regulate conduct in Ontario and I think he is right.

The fourth test is whether or not there is a clear intention to enforce the conduct regulation. Is there a clear intent to slam closed the doors of businesses that open on Sunday?

**Mr Callahan:** I hear the boots already.

**Mr Sorbara:** On this he did not give an answer and I cannot give an answer. The only thing I can tell my friends the Solicitor General, the government members and the studio audience is that the problem we had when we tried to tackle Sunday shopping and wrestle it to the ceiling was that it was impossible to enforce a tourism exemption. Storekeepers all over the province would go through all kinds of contortions to meet the tourist exemption. The local A&P store in downtown Hamilton put up a sign saying "Welcome tourists, we're open on Sunday."

Even if there is a clear intention to enforce, I want to tell my friends on the government side that you will have a devil of a time trying to enforce this bill that arbitrarily tries to pick the winners and losers; that tries to say, "Yes, you can buy a toaster oven on Sunday at this store but you can't buy a toaster oven at that store because it didn't get the approval of the local council." Or if the bill passes as the Solicitor General proposes, the store owner gets the approval of the local council, but some fanatic appeals to the OMB. He gets into a 15-month hearing and packs up his suitcase and goes home because it is not worth the legal expense.

These are shopkeepers. These are not the Conrad Blacks of the world who can hire the high-class lawyers from Bay Street. These are shopkeepers who are looking for an opportunity to do business when people want to

come and shop. We have been discussing it for five months and you still will not understand that the world has changed out there. We do not bow to the needs of Christians any more. I say that as a Christian. We do not bow to the needs of any other group. We set rules that meet the four standards of our friend the assistant solicitor from Muskoka. This bill does not meet that test and you ought to withdraw it.

Let's look at the way in which we have tried to improve the bill. The amendments that we brought forward are trying to make a bad piece of legislation not perfect, but acceptable for passage in our Legislature. That is why this amendment to provide economic criteria is here. We admit it is an open door; it would let anyone qualify. But do the New Democrats not believe in freedom of choice? Should we not stop this business of trying somehow to figure out what to do with that wonderful, ancient, now-disappeared tradition of no work on Sunday?

I remember the commandment "Keep holy the Lord's Day." We would not do anything on that day. We did not play hockey.

**Mr Winninger:** Thou shalt not delay legislation unnecessarily.

**Mr Sorbara:** That was not a commandment from Moses, my friend, and my constituents elected me here to make bad legislation better as an opposition member.

Interjections.

**Mr Sorbara:** We are upholding nothing. We are trying to improve what you do and save the people from a bill—listen, let's just pass it. That is fine. You guys are going to hang on this. You really are going to hang on this.

Our amendments tried to make a bad piece of legislation at least presentable to the people of this province. We have the economic criteria and we have heard that it is not going to fly. "Forget it. C'est impossible. This would leave the door too open to abuse." Abuse of what sort? You mean storekeepers are actually going to unlock the doors at noon on Sunday and say: "Come in. I have some wares to sell"? If that is abuse, give me more of it.

1600

I do not think you are going to pass this one. We put forward an amendment to allow music stores to stay open. We thought, "They're not going to do economic development criteria, but we have some people out there who run music stores who are getting burned in an unfair market." I think of one retailer in Scarborough who said, "The video store renting pornographic movies three stores down is also selling compact discs and he can do it legally." You can use your eyes on Sunday to see movies. That is fine. You can take them home and indulge to your heart's content. A couple or three years ago we said, "The bookstores can stay open. This is good. We want people to read. Literacy; this is the future of the province. Keep the bookstores open." That is fine, but you cannot use your ears. You cannot go and buy Beethoven, Bach or Mozart. It is the 200th anniversary of Mozart and you cannot go and buy a piece of music and listen to it on Sunday.

Do you know what this retailer did? He was so offended that he started renting out his CDs and his tapes on a

50-year basis. He charged the same price. Rent it for 50 years, bring it back and that will be great. You know what? The police in this NDP state came and busted him again and that is going to be another \$2,000 fine. He is going out of business with \$10,000 in fines. I am asking you to support a little amendment to say he can stay open if he wants on Sunday and what are you saying? "No. My God, we couldn't do that. This would offend the principle of a common pause day for retail workers." He does not have any workers. It is just he and his wife. No one is going to be offended. Nobody's rights are going to be violated. It is just he and his wife. I am asking you to let them open their stores if they want to. I think you are going to say no, but we are going to see when I propose that amendment.

Then we brought forward the so-called Dylex amendment. We thought that if you will not open all year round on a local option basis, which is what the Liberal bill was, maybe you will recognize that retailers in this province right now are having a difficult time remaining competitive, meeting the payroll and paying the suppliers, so let them stay open from Thanksgiving until Christmas.

I appreciate that it is a kind of sop to the Christmas season, but we will be putting it forward because we feel that retailers need a break. I mean, you will not reduce the taxes. You should be reducing retail sales tax right now because we are in such desperate straits. You should be reducing gasoline tax now because people routinely cross the border buy a dollar's worth of gas in Windsor to get them over the bridge so they can fill up their tanks. Then they get the milk, bread, cigarettes, booze and toaster oven. We need a tax break. We need a break for these people. We need to do something.

Do you know what they did in Denmark? In Denmark they had such a terrible cross-border shopping problem with Germany that—

**Mr Callahan:** They blew up the bridge.

**Mr Sorbara:** My friend says they blew up the bridge. I do not think that was the case. They drastically cut taxes on gasoline, cigarettes, beverage alcohol and a number of other items. Do you know what? There is no cross-border shopping problem any more.

Here we could all use a little tax break. Shelley Martel campaigned in Sudbury saying that the retail sales tax should immediately go down from 8% to 7%. The former Premier of the province, David Peterson, said the same thing and it got him in a lot of trouble. You are in government now. Let's adopt Shelley's plan. Let's bring it down to 6% or 5%, maybe for just a one-year period. The Tories used to do that and that was to good effect.

But if you will not do that, we say in these amendments, for God's sake allow the storekeepers at least enough freedom for a quarter of the year. It would not be so bad. We asked for October to December and what did we get? Three weeks in December. My God.

**Mr Morrow:** What a compromise. We listened, right?

**Mr Sorbara:** My friend Mr Morrow says, "We listened." You did not listen to the people I heard during this committee.



Finally, we brought in an amendment just to deal with the timing of the coming into force of this bill. We do not see any support for that either. What did the government give us in terms of amendments, after all we have heard and after the evidence that the province now is satisfied that people are grown up enough to keep holding the Lord's Day in their own way, whether shopping or not, whether worshipping or not? What kind of amendments did we get from the government initially? Two amendments that will make it so administratively difficult for a shopkeeper to open on Sunday that he would have to be rich enough to get out of the business anyway in order to meet the administrative burden here.

First of all, we sick the Ontario Municipal Board on the shopkeeper. What happens is this: The shopkeeper goes to the municipal council and says: "I would like to open my store on Sunday. I have a significant tourist clientele. I need the business. Here are my financial statements. Everyone in the area agrees this would be a good idea." The council says, "Yes, we support that." Under the bill you initially proposed, the next Sunday he could open his doors.

Now, the bylaw that is passed is not in force for 31 days and the amendment invites any interested person to appeal to the OMB. So Gerald Vandezande, who is not here today, the first day he has not been in the studio audience, goes to city council and says, "I have 2,000 voters who are not going to support you if you don't like that." If Vandezande does not win, then he can raise enough money just to hassle them at the OMB for a good 15 months. I will tell you, sir, it does not matter what the Solicitor General says about expeditious hearings at the OMB; as a lawyer, I can drag that hearing out for a good year if I want to, with evidence and new submissions.

The shopkeeper says: "What's going on? I just got permission from the local council to open my doors and now every other day I am down at my lawyer's with a cheque, paying for an appeal to the OMB that I didn't instigate." That is what you give us after a month of public hearings, when people said they wanted the freedom to make up their own minds. That is the first amendment.

Notice in that first amendment that if the shopkeeper does not get a favourable consideration from the local council, he or she does not have the right to appeal to the OMB. This is the most discriminatory, distasteful amendment I have ever seen brought forward during my time on this committee. Those who want the stores to close get a right to appeal the decision of the local council to the OMB, but the shopkeeper who brought the application to the local council, if he is refused, has no right of appeal in the mind of the Solicitor General. If you think that is fair, you and I have a different idea of what fair is. At least you could have made it balanced. At least you could have given an equal right of appeal to the shopkeeper who was turned down perhaps for political reasons.

Just before election time Jack Layton is worried. Jack Layton is going to give us zones of tolerance for prostitution in Toronto. That is great. Thank you, Jack. That is just what we need.

**Mr Callahan:** On Sunday too, I'll bet.

**Mr Sorbara:** On Sunday too, my friend from Brampton says. But if Jack Layton, the political beast that he is, hears that a whole bunch of people do not want the Eaton Centre to stay open on Sunday, then Jack Layton suddenly changes his tune and becomes intolerant. Well, our kids will go to the zone of tolerance rather than go to the local malls, and that makes me very disappointed.

**Interjection:** Come on, now.

**Mr Sorbara:** Well, listen, he is the NDP candidate in the city of Toronto. He is not my candidate, he is your candidate. It is his zones of tolerance. I am glad the Solicitor General is here, because they are his zones of tolerance that he is going to have to police. What does this mean, "zones of tolerance"? Why do we not just call it a red light district? Give me a break. We will move them out of this neighbourhood and have a zone of tolerance.

1610

What is the other amendment the government brought forward? It is not good enough that there is an appeal by the Lord's Day Alliance to the OMB. We need another avenue to close down the stores.

Let us say a store is staying open, oh my God, illegally, actually opening the door to try to sell some of its goods and services on Sunday. In the democracy I know about, the people to enforce that law are the police. Here is the Solicitor General needing enough police to go around and close down all these nasty shopkeepers and get them back to church. Most of them go to church before they open the store, but that is another story.

It is just not good enough in Allan Pilkey and Bob Rae's Ontario to have the police do the job. They bring forward an amendment allowing any—here it is again—"interested party" to bring an application to the Ontario Court. This is vigilantism.

**Mr Morrow:** Point of order, Mr Chair: Would you please ask the honourable member, Mr Sorbara, to go back to his original amendment, if you would not mind.

**Interjections.**

**The Chair:** Order, please.

**Mr Sorbara:** I am speaking to the amendment, Mr Chairman. I am saying it is unprecedented for a small, quasi-criminal matter that is supposed to be enforced by the police to be put in the hands of local fanatics who will go to court and demand an injunction and then take it to the storekeeper and say: "There. Not only did you break the law and you are subject to a fine, but now the courts are going to jail you if you keep your doors open."

What kind of amendment is that? We have enough police officers if you have to proceed with this bill. This is intolerable that you would create vigilantism in Ontario to satisfy a few fanatics in the United Food and Commercial Workers International Union. I heard them call for that amendment. You are giving them their OMB amendment and you are giving them the vigilante amendment. So what are they going to do? They are going to go around and take union funds and organize court cases looking for injunctions, and I find that unacceptable.

Do you know what? You are not going to get it, because I have the authority to establish that the amendment is out of

order. It will never get by me if unanimous consent is necessary. I tell my friend from Oshawa that the government is not going to get it, because we do not need vigilantism in this province. If there are going to be laws, let the police of this province enforce the laws. Let us not open it up to citizens who might have ulterior motives. "Interested parties," indeed. We will have none of it. I hope this committee will accept this amendment, which allows for economic development as a criteria. I commend it to you and to the members of this committee. I hope we have a vibrant debate on it and that when we finally come to vote, it will be acceptable to the Solicitor General and to the other members of the committee.

Those are my remarks, sir.

**Mr Harnick:** I have listened with interest to what Mr Sorbara has said and I will be supporting this amendment because it will expand the scope of the municipal option and will take it out of the restriction of a tourist zone only.

However, I think this bill is a joke. The whole bill should go. This amendment makes a bad bill slightly more palatable, but everything that is wrong with the bill remains.

I cannot accept this government delegating to the municipalities, any more than I could accept delegation to municipalities in the Liberal legislation on Sunday shopping. There is no question that delegated authority did not solve the shopping problem when the Liberals enacted their legislation, and it is not going to solve the problem with Sunday shopping now that the socialists have proposed the legislation. If anybody thinks that is the solution, he is absolutely wrong.

The idea of the common pause day is now absolutely meaningless. The minister came here, I asked him questions, and he could not tell me why Sunday was chosen as the common pause day. He said it was tradition. I asked him what tradition he was referring to and he could not tell me. He showed great reluctance to put on record that the only tradition there is on Sunday is a religious tradition. He would not admit that, but at the same time he did not know what tradition he was referring to.

On the basis of his testimony, the common pause day is completely meaningless as far as I am concerned. This is corroborated by the fact that he has now stood up and said that we may shop for three Sundays in December. If that is the case, there is no such thing as a sacred common pause day. If you can do it for three or four weeks in December, you can do it for 52 weeks, and nobody is upset by it.

This idea of falling back on a common pause day is nothing other than the grossest hypocrisy. That is exactly what this bill is predicated upon: gross hypocrisy.

The common pause day is also in direct contravention of the Charter of Rights and Freedoms. There is absolutely no question in my mind that this legislation will be challenged and declared contrary to the Charter of Rights and Freedoms. We only have to look at the equality provisions. We also have to look at the idea of the multicultural society we live in and at the charter in terms of section 27. This legislation, I submit, will be deemed unconstitutional.

If you want to be honest about this legislation, you have to look at who is being affected by Sunday shopping. The retailers are the people being affected. They are the

people who own the small businesses we habitually support and buy our produce from, the people we buy our clothing from, the people in the neighbourhoods who run the commercial districts, the people who are our friends, the people who keep our communities vibrant. Those are the people who are being forced not to do business. Those are the people whose livelihood is affected.

If the members of this government honestly believe they have to protect union people, and they are entitled to that belief, they can do it by making amendments to the Employment Standards Act. This whole bill is nothing more than a big redundancy. It is totally unnecessary legislation. If the only thing that has to be protected is a worker's ability to refuse work on Sunday, then enact legislation that says nobody can be forced to work on Sunday. You do not need a Sunday shopping bill to protect employees from working on Sunday, and that is what this bill does.

Furthermore, this bill, with its amendments, is a complete mockery. On the one hand, it says you can declare yourself a tourism exemption and open, and those criteria are very broad. On the other hand, there is the ability and opportunity for any person who does not like this legislation to go down to the OMB and effectively prevent the municipal option from taking place. They can do it and get a thousand of their friends to do it, and someone's application for a tourism exemption can be held up for years. On the one hand, you are giving the opportunity to shop. Then, realizing the criteria you laid down are too broad, you are closing the opportunity for people to do business on Sunday.

The three or four weeks in December is another thing that makes a mockery of this legislation. Why can you shop in December? The reason you can shop in December is that Christmas is coming, and Christmas is a Christian holiday. We have the minister unwilling to admit that the tradition preventing Sunday shopping is the Christian tradition. He is afraid to say that, but he cannot tell us which tradition it is. The tradition that permits Sunday shopping for four weeks in December is the idea that you have to permit people to shop because they have to get ready for Christmas, which is a Christian holiday.

1620

I cannot quite understand the hypocrisy of all this. You will not admit that Sunday is the pause day because it is the Christian day, yet in December you can waive the Christian day to shop for the Christian holiday that takes place on December 25. It is positively ludicrous. It is the stupidest, most ill-conceived way to approach a piece of legislation that anybody could possibly imagine.

I suspect that there are people—those NDP spin doctors—who lie awake at night thinking about these things because they have nothing else to do with their time. It smacks so badly of hypocrisy that anybody who could present legislation like this has to be an idiot.

**Mr Fletcher:** On a point of order, Mr Chair—

**Mr Chiarelli:** What is the matter? Do you object to "idiot?"



**Mr Fletcher:** Yes, I object to the word "idiot" being used, especially when—

**Mr Harnick:** I will withdraw that.

**Mr Fletcher:** Thank you.

**The Vice-Chair:** Thank you very much, Mr Harnick. Continue please.

**Mr Harnick:** Sorry. They have to be, at the very least, very confused.

**Mr Callahan:** Not rocket scientists.

**Mr Harnick:** Not scientists of any kind. I do not think they are scientists enough to put together a set of toy trains.

**Mr Mills:** Who called the last election? Were they rocket scientists?

**Mr Harnick:** No, I do not think anybody will admit that the people who called the last election were any kind of scientists either.

This legislation just absolutely smacks of hypocrisy. If you really want to protect workers from working on Sunday, do it in the Employment Standards Act and scrap the rest of this nonsense. Let people in this province do what they want to do. Do not tell people when they can shop and when they can sleep and when they can go out and when they can work, because it is none of this government's damn business the way people conduct themselves in terms of when they want to work and when they do not want to work.

If your interest is to protect the people in society who may not want to work because this is a religious day, and I respect that, then do it in the Employment Standards Act. You can accomplish exactly what you want to accomplish without being hypocritical.

That is why I do not think this is a great amendment, but nothing short of scrapping this bill would be the right procedure. This amendment makes this bill slightly more palatable and I will vote for the amendment. But again, I urge the government to withdraw this legislation and amend the Employment Standards Act. Let's stop talking about Sunday shopping in this province, because we are going backwards instead of forwards.

**Mr Mills:** I do not propose to speak for 35 or 40 minutes ranting and raging about all the things that have been said by both the opposition and the third party, because we are here to get on with this bill and to get it finished and into the Legislature and dealt with.

**Mr Harnick:** There has to be more to it than just getting it done. Let's do it right.

**Mr Mills:** I am opposed to this amendment and undoubtedly my colleagues will be too, because what this does is merely widen the municipal option. That is what this amendment is all about, and in effect it potentially will make wide-open Sunday shopping and destroy the concept of this bill, which is to protect the common pause day.

There is all kinds of rhetoric about what is the common pause day. I presume, and I do not think I am alone, that most of Ontario grinds to a halt on Sundays. The schools all close and it does not matter what religion they are. Everything grinds to that slow, wonderful way that we

have come to spend the weekends, and in particular Sundays in Ontario, and that is a fact of life. So with those comments, I will not be supporting this amendment and neither will my colleagues.

**Mr Callahan:** I come to visit this committee as a sub, but this thing has been going on since I was elected in 1985. It is like a time warp. I really wonder. We may have a new name for Sunday by the time we get through all this stuff. I always realized that politics was the art of the possible, not the art of the impossible. From what I understand of the bill, you guys are trying to satisfy everybody.

When I chaired the standing committee on administration of justice on the original Sunday shopping legislation, people came before us with legitimate concerns. There were people who considered Sunday to be a holy day, as I guess many Christians do, and as I do. I consider it to be a family day. There were workers who were concerned about having to work on that day. We listened to that.

At that time, the bill the Liberals brought forward put Sunday shopping in the arena of the local councils. You really had the greatest protection because local councils are the closest political body to the people, one that can be approached expeditiously and without great expense—at least in my community they can, I do not know about the rest, though I think it is pretty well the case throughout Ontario. People could air their views and try to persuade the people who represented them that they should or should not open stores on Sundays. It provided a good sounding board where the businessmen who did not want to open up or the workers who did not want it opened up could square off and convince these people they should vote one way or the other. The ultimate weapon they had, of course, was that if their representatives did not listen to them, they got turfed out in the next election.

What have you tried to create here? I have to give you the benefit of the doubt that you are trying to do it in good faith. But I do not think you really understand that you are creating situations such as—listen to this very lofty section of the act: "The Lieutenant Governor in Council may make regulations, (a) prescribing tourism criteria for the purposes of this section." The average Joe out there figures that Lincoln Alexander walks down the hall and gives his blessing to this. We all know that the Lieutenant Governor is such a marvellous man, and I am sure all of our Lieutenant Governors have been marvellous people. People trust them. They trust them more than they do politicians and they figure: "Well, if that father figure or that mother figure is presiding over the expansion of the restriction of the definition of tourism, I'm safe. I can sleep at night comfortably."

I think it is time the public really clued in to this. When they talk about "Lieutenant Governor in Council," they are talking about the cabinet. Even that would not be half bad, because the cabinet normally is people who sit around and try to work out on a reasonable plane—be it for political reasons or expedience or whatever—the best possible program. But it is not even the cabinet. The reality of the process today in this province and in the federal Parliament and in the parliaments throughout this country is that these decisions are made by the Premier or the Prime Minister and

an inner circle of about four or five cabinet ministers, the people who can have more pressure or political points against the Premier and can control him, and four or five spin doctors who have absolutely no elected status.

Let's take the scenario. We are trying to create a common pause day. That is the watchword. That was what was pitched around in the election: "We're going to try to satisfy the people who came before us in good faith because they wanted their religious day protected, they wanted the family protected, and they wanted not to have to work on that day so they could be with their children." What did we do in an effort to accomplish this? We used the terminology I have just said. We have now left it in the hands of that august group down in the back office to change it at will without telling anybody. They do not even have to tell us. It does not have to go through the House. Nobody can debate it. It is strictly in their hands.

1630

That is a double-edged sword. Somebody here said, "Go ahead and pass this bill, because you are going to choke on it," and I suggest you will, because what it is going to require is a political body to restrict or expand that definition at some point, either on a general basis or on an application-by-application basis, and I guarantee you will not have the guts to do it. We will be right back here, either on that or on a challenge to the Supreme Court of Canada when it tells us that, yes, we are protecting the rights of Christians, but we are not protecting the rights of Muslims; we are not protecting the rights of people of the Jewish religion; we are not protecting rights of God knows how many other religious persuasions that have some day other than Sunday as their special day.

I always get a big kick out of it when everybody says it is going to destroy family life, but I do not believe you artificially create the perfect family. You do not create it by putting barriers there to prevent them from doing things on a particular day. You do not force them to go to church on Sunday, although I suppose many of us do. Do you think if you force them to go that they are any better off than they are if they go on their own? Do you think there is any way you can force dad to put aside his beer or his pop and turn off the television set and get rid of Sunday football or whatever else he is watching? You walk into the typical home today on a Sunday and I will be willing to bet you will see the father, and perhaps the mother too, sitting down in the living room or the kitchen or whatever, glued to the tube watching every sport imaginable, figure-skating or what have you.

If that is what we are holding together as family life—and where are the kids gone? They have disappeared because they cannot get access to the television set, so they have gone over to their buddy's house. God knows what they are doing over there, but they are not exercising that family togetherness. You are leading a lot of people to believe that this is what you are trying to protect. Really, you do not care about the rest of society. It is the organized worker you are saying you want to protect. They are coming to you in a power group and saying, "Look, we don't want this, and if we have to do it, we want some bargaining power so we can ask for double, triple or quadruple

pay to work on Sunday." That is what it is. It is a bargaining chip. This province and this country can ill afford to place any greater burden on the economy.

I was listening to the United States news last night. They believe that if they can put more money in the hands of consumers, the retail business—small business and larger businesses—will prosper. They had several economists on there who said: "No. That's not going to happen, because people are so frightened about what is going on globally—the inability to compete—that they are not prepared to go out." Whatever money they can possibly save, they are putting away like a squirrel. They are not going to spend it now. You go into any registry office in this province and you will find maybe five, 10, 15 people in there, whereas before you would have found them elbow to elbow. That is the sign of how the economy of this province has gone.

You talk about cross-border shopping. How are you going to protect these people who are trying to eke out a livelihood in the border shopping areas? What this amendment does is put it on the table so that people can make decisions about that. They do not have to rely on the length of the foot of the Premier of the day or the cabinet of the day. They can in fact determine in as clear a way as they can that there are other factors to consider.

What would happen if the council of a municipality decides, for whatever reason, to give somebody the nod and say, "Go ahead. It is clearly a tourist operation," and it is not a tourist operation? Are you telling me that the strings up here at Queen's Park and the eyes and ears of the world are going to be watching every one of these little things that takes place and are going to prosecute them to the full extent of the law? Balderdash. Any of us who has been on municipal council has watched his councils pass bylaw after bylaw, and we know damn well they will never be enforced because we do not have enough inspectors to enforce them. We are the laughingstock of our communities for putting them forward, because you cannot enforce them.

That is precisely what you are doing here: You are inviting people to break the law. You are inviting elected representatives to break the law for whatever reason. It could be because they like the guy or the lady who came in front of them. Maybe they were supporters of theirs in the previous election. Maybe they like their retail store where they get their garments; they want to have it opened up. You are opening up such a can of worms in terms of favouritism being applied to individuals who come before that council.

I was joking, but I thought the Solicitor General said these inspectors actually will be the Premier's appointments. But you are going to have to have an awful lot of them and even catching them. Okay, we have this separate force that is going to catch them. Then you have to get court space to try them. If you have ever seen what happens in courts where they try to do parking bylaws or speeding or Highway Traffic Act offences, they are jammed to the rafters. Howie Hampton will probably roll over in his grave when he finds out, if he does not already know, about this special force, this special prosecution.



You are just going to backlog the courts something unbelievable.

It is just an invitation to let people cheat and just wink at it. Every time you pass a law that has no effective way of being enforced, you weaken the entire principle of the rule of law, because what you tell people is that here we are, the most august body—some people probably disagree with that; I think many—in the province making laws that we wink at, that we cannot possibly enforce because Floyd Laughren says we do not have the money to hire more of these brown-shirt inspectors to enforce the law. So we laugh at it, we wink at it.

**Mr Winninger:** They are not wearing brown shirts.

**Mr Callahan:** Well, whatever—green. I would prefer green because it is Irish. But think about it. You are walking down the line towards disaster. You are creating a bill you think is going to solve a problem, or you are doing it to satisfy, as was suggested—I would not be so offhanded as to suggest ulterior motives, but you are trying to placate a particular interest group. You are going to find that you are going to lose the respect of those good, law-abiding people out there who do not see this bill working.

Just take an example. I am sure you would agree with me that you would object as a municipal council person to someone speculating in real estate, in other words, coming before a council and getting a property zoned to one level, and rather than building anything on it at all, just trading it off and selling it to the next person who then comes forward and gets a higher density and increases it and the net result is that the cost to everybody of that development is much greater.

Let me refer you to section 4.2, which I think will be helped by this amendment, where you allow municipalities to apply the standard to “one or more retail business establishments or to one or more classes of retail establishments; (b) may apply to all or any part or parts of the municipality in case of a bylaw or to all or any part of a territory....(c) may limit the opening of retail business establishments on holidays to specific times....” Do you not see what you are doing? You are stepping into decisions and you are enhancing the value of those decisions.

If I were the guy owning that business, I would not work for a living. Probably some people say we do not work for a living now. What I would do is go out and find a business and take it before the municipal council and convince them that this should be a tourist operation, maybe because I was eloquent and was able to convince them, or maybe because it did fit in the scenario of tourist, or maybe because I had helped a couple of these people get elected and I could convince them they should say this is a tourist operation.

It never gets to Queen's Park. I have this picture of this person sitting down here scrutinizing every bylaw that comes in through the door; you know, pushed under the door to him. He or she will be the decision-maker as to whether or not this fits into the Lieutenant Governor in Council's regulations as to what a tourist zone is.

But let's say they do not get down here. You could sell that business. That business now becomes worth money. It

is like, I have a QC. We tried to abolish QCs. All we did really was stop giving them out, so my QC now is worth a hell of a lot more than it was when I got it. That is what you are doing. Once you limit a commodity, you enhance the value of it. If that is what you want to do, if you want to have somebody trafficking in businesses, that is what you are creating with that section.

1640

If you look at the amendment we have put forward, I think Mr Sorbara has put it forward not because he endorses what you are trying to do, but it is an effort, a last-ditch stand, as it were, to try and hold the economy together. We are starving to death. We are going down the tube. I think the Treasurer is going to find that out when he starts looking at the revenues that are coming in. They are not coming in. There is no land transfer tax; there are no registration fees; we are no longer collecting the special—what was it?—victim surtax we brought in in the courts. We are no longer collecting this, that and the other thing; retail sales tax.

Who do you think is going to pay for the cruise? We are all on the cruise. Who is going to pay for it? You are in fact striking one more dagger into the economic sickness of this province by enacting this legislation.

However, if you go with the amendment, you will get a bucket to bail the boat out a little bit, because it says “be open on holidays for the maintenance or development of tourism”—whatever that is—“for economic development purposes”—ie, if Windsor or Niagara Falls or Sault Ste Marie and so on are going down the tube—“or for any other purpose prescribed by the regulations made under this section.” I guess the only thing I would disagree with is that it should not be a regulation. But it has been concluded that is what it should be. Again, they are silent laws and you get no input from the legislators.

If you really look at it, you are going to realize that you are creating a monster. You are creating Frankenstein, and you had better know how to destroy Frankenstein, because we all know what happened when Frankenstein was created. He got out of control, and that is exactly what you are doing here.

I might add also, on the definition of “retail business,” that there are retailers and there are wholesalers. What if I decided to become a wholesaler? What if I opened up a business where I was selling wholesale, not retail? I question whether or not you have governed that under this act. So suddenly we all go from retailers to wholesalers and we bring people in to work on the common pause day, just like they would with the retailers, instead of addressing, as was suggested, through the Employment Standards Act the issue of protecting the worker, giving him or her the right to say, “No, I don't want to work,” or “If you want me to work, you're going to have to pay me to do it.”

In my community, as I am sure in your communities, if you are active and you go around and take a good look at them, people are suffering. People want that extra work. People need that money to survive. People need that money to meet their housing needs. They need it to put food on the table for their kids. You are taking that away from them. You are saying to them, “Sorry, we know better

than you do." It is, "Let them eat cake," except that in this case it is: "Let them eat nothing. Suffer, because we have a political agenda that has to satisfy this one powerful group that says, 'We want this type of legislation,' and we're going to try to do it by sleight of hand. We're going to try to tell the religious groups, 'Hey, we looked after your Sunday for you.'" At the same time, you are kicking sand in the face of the Jewish community, and the Muslim community. You explain that to your constituents when you go back out on the campaign trail.

Finally, this bill is a lawyer's delight. It is going to make lawyers very rich at the expense of the taxpayers. I would be willing to bet that there are at least five holes in the amendments you are suggesting that will win the day in the Supreme Court of Canada.

Do you know how long it takes to get to the Supreme Court of Canada? You go through the various levels, probably before a justice of the peace first, then to perhaps another level and another level, or you go to the Ontario Municipal Board. You are just creating a delight for lawyers. You are going to have big legal bills. I would love to be in the estimates of the Attorney General the year after this bill is passed, just to go through how much money has been spent by the Attorney General directly or through secondment to the other ministries. You are going to find megabucks, dollars that could be spent in a much more productive way to help people.

I really urge you to think about it. I know you have probably been given your marching orders, but as I said today in the House and I say every chance I get somebody to listen to me, if you got elected, if you are going to take the opportunity and the—I use the words "sacred trust," but I think equally you could say the fact that people worked hard for you to get elected, that they voted for you, that they are depending on you, and if you are going to allow the government's agenda to drive your decision and drive your vote, then this place might as well close the front door, all of us go home and save the money. We will get the Lieutenant Governor, who is always a good person and well respected by the people of Ontario. He can get into his carriage and, instead of opening the Legislature in that landau, he can throw money to the people. That will be a better way of distributing it than having 130 of us down here thumbing our noses at the taxpayers, and that is precisely what we are doing with this.

I am not naïve. I know what I am saying to you is just going into deaf ears.

**Mr Winner:** We do not use the term "deaf," remember?

**Mr Callahan:** Sorry about that. It is going into ears that are not going to allow a decision to be made according to the way you believe or the way your constituents want you to believe; you are going to play the party line and you are going to march to the drummer of those spin doctors and those unelected people and those people who have no say in it at all.

The Solicitor General is gone, but I feel sorry for him. I do not believe he has control of this bill in cabinet either. I think they are being told: "This is what you're going to do.

To hell with the taxpayers; they don't mean anything. They're incidental. They're not bright enough to know what's good for them, so we'll just tell them what's good enough for them." If you have to go back to your ridings and defend that, you have problems.

At least originally by our bill of putting it to the municipalities—AMO did not like it. I do not hear one word from AMO these days. AMO thinks that was pretty good. You do not hear it as a specific issue in the municipal elections, because people wanted to have that opportunity to address their local representatives and to have a say and to be able to have accountability in the whole process.

What you have done is given it back to Big Brother. You have tied the strings to Queen's Park, just like it was during the Conservative days with the definition of tourism where they could open up a fruit store and call it a tourist attraction because the fruit store was being charged constantly and people liked to get their fruit there on Sunday, believe it or not. That is how it happened. People laughed about it; it was a big joke. "If you want to open up, you've got to become a tourist operation." It got to the point where anything was a tourist operation. That is really sick.

I believe the amendment being offered is not going to solve this piece of legislation, but it certainly is going to at least put some protections in there and perhaps allow our economy to limp back to some degree of vibrancy, because it certainly is going down the hill, and we are helping it. We are throwing dirt in the hole and we had better decide not to do that, or we can go and blow up the bridge, as I suggested, because that may be another alternative.

That is what happens. When the economy gets so bad, desperate measures are resorted to. Your government is now resorting to a measure that is going to require more desperate means by people so that they can survive, so that they can have presents for their kids at Christmastime, food on the table and so on.

You go talk to some of your constituents, women and men and students who want that work, and do not listen to the powerful lobby groups that tell you that you have to do this.

1650

**The Chair:** I would like all members of the committee to note the time. That has not been changed. It is actually only 10 to 5.

**Mr Chiarelli:** I want to make some detailed comments on this particular issue and, again, I want to try to make them in the context of being helpful and perhaps having some reasonable debate. I am sorry the Solicitor General is not here, because I wanted to speak to him quite directly.

First of all, I want to raise for some of the committee members, particularly on the government side, the question of why there is any imperative at the present time to pass this legislation. We know that over the last period of time we had the Conservative government legislation, which had a tourism exemption. The tourism exemption, in effect, was a local option. Many municipalities passed bylaws which permitted them to be open, which could be



done without reference to any particular criteria, and the province survived.

Obviously there were a lot of special-interest groups lobbying the government for particular reasons, and then we embarked on a review of the legislation. We amended the legislation and put the legislation in place. It was de facto a local option. The province continued to survive. Politics thrived. The politics of this issue are absolutely unbelievable. Special-interest groups, union groups, church groups, retail groups, border communities—it was a political whipping boy for every special-interest group imaginable.

Then of course we had the Supreme Court declaring the Liberal legislation unconstitutional, and we had wide-open shopping. There was no restriction whatsoever. The province survived. There were no major calamities that occurred, and yet the politics thrived.

Now we have the New Democratic government coming in and wanting to impose a new political imperative that says, "This legislation can be improved." The real reason for the legislation is to satisfy a number of special-interest groups, because the politics of this issue continue to thrive.

I think it is important to put this current legislation into perspective: The province has survived, it has continued, but the special-interest politics have also survived and have gone through this whole process. When the government comes in and says, "We must have this legislation because," the "because" is not that the province is going to survive or not survive; the "because" is that we have told special interest groups we are going to pander to their particular lobbying. That is the reality of it. This legislation is made to order for special-interest groups.

If you look at the issue logically, you should be saying that everything is closed except the real emergency operations—emergency transportation, health care, etc—or, logically, everything should be open. It should be province-wide or it should be local option. To put all the permutations and combinations to try to appease one religious group versus another, to try to accommodate one group of workers versus another group of workers is illogical and is unfair.

The whole history of this legislation is a pandering to special-interest groups and has no relationship whatsoever to what is happening in the marketplace, other than that this legislation and legislation like it impacts very negatively on certain special-interest groups. It is unfair and it is discriminatory in many respects. So when we in the official opposition saw the government take initiatives on this particular issue that it wanted to legislate, we said: "Great. They are going to drown in it. It is a no-win situation." You jumped into it with all fours and you jumped into a can of worms, which you ought not to have done. You are now in a political jackpot, a political mess which you have to try to extricate yourselves from, and you are groping for ways to extricate yourselves from, really, a political mess.

I respect the fact that you are a new government, you have new ministers, and you had an agenda which you wanted to get to as quickly as possible. But I think in many

of the initiatives that the government has taken, it has put the cart before the horse. What you did was take a political decision, a political initiative, draft legislation which represented what you collectively in caucus thought was your platform or your ideology and, after the fact, consulted and took advice.

On virtually every initiative that has been taken, you have had to reverse yourselves, including Sunday shopping legislation. The reason you have had to reverse yourselves on every major initiative is that you took the decision before you consulted and before you took the professional advice of the bureaucrats, the lawyers and the technical people in your various ministries. When you look at the initiatives that were taken—for example, the employee wage protection program—you took the initiative and then you consulted and took advice, and you had to make a very significant retreat.

On the environmental bill of rights, the minister promised to introduce it, was going to introduce it. She put it on a short time line. After the fact, she took advice and consultation and had to back down: The cart before the horse.

Bill 4 on rent control, the same thing: You brought in legislation and then you consulted and took the advice. Then you had even your own constituents, the landlord and tenant groups, saying it was a major betrayal.

Bill 70, the gas guzzler tax.

On Sunday shopping, you introduced the legislation, you went out to committee, you consulted people and you found, "My God, we do not know where we are going with this thing." So what do you do? You adjourn the committee, suspend it indefinitely. Then what do you do? You decide you are going to bring it back in. The minister issued a press release with respect to the Ontario Municipal Board appeals and access to the courts and said that is going to solve the problem. You went out and took more advice and consulted more, and you decided, "Hey, why don't we open up Sundays in December?" Another major retreat and a major change of position.

It all points to one basic flaw in the process of decision-making in this government. You take a decision based on a cursory ideological propensity to do something and then, after the fact you consult and you take advice, and you find that you have to change your position. That is exactly what has happened in the case of Bill 115.

If I can go back and just refer to the second-last set of amendments that were being proposed by the Solicitor General—I am talking about the communiqué or the news release of 27 September—I just want to refer very briefly to what the Solicitor General was saying at that point in time, a month ago. He says, "We are making good on our long-standing commitment to provide common pause day legislation that protects the rights of retail workers and recognizes the unique requirements of the tourism industry."

He could have made that statement any time—at the time he first introduced Bill 115; he could be saying that today—but the fact of the matter is that the bill was very lacking at the time he made this statement on September 27. At that time, when the opposition raised some objections that the bill still was not good, the members of this committee, cabinet and caucus said the opposition was



being unrealistic, it was being obstructionist. Yet several weeks later, we are coming in with what appear to be major compromises and major changes in the legislation again. So I think it is fair comment to say that there are significant political pressures at play in the caucus, in the cabinet and by special-interest groups, which keep moving this issue around and making it very dynamic.

1700

As I said before, the province survives our political wanderings, the political wanderings of the Conservatives, of the Liberals and of this New Democratic Party. So I take some exception when people come in at this point and say, "There is a political imperative to get this through within two weeks," because there are significant defects in the government amendments which must be addressed, which we want to try to address as the opposition, and I think we are entitled to take the time to address these.

If I can get back once again to the Solicitor General's communiqué of September 27, he indicated that the amendments would include "an appeals mechanism through which tourism exemption bylaws could be challenged. This would be administered by the Ontario Municipal Board which will be obliged to make its best efforts to conclude the appeal process within 90 days." We all know that is a virtual impossibility, and it is a gross misrepresentation to the people of Ontario when the Solicitor General indicates he feels they can meet this 90-day deadline. I will address this in some detail later in my comments.

The Solicitor General also indicated that "at the request of chambers of commerce, there would be no reference to them in the final text of the regulation under the bill which sets out the exemption criteria." He is choosing to let the chambers of commerce off the hook, but what about the Ontario Municipal Board? The Ontario Municipal Board no more wants this than it wants a hole in the head. What is the rationale for letting the chambers of commerce off the hook but not the Ontario Municipal Board, which has such an onerous responsibility to help any government of this province manage development in this province? There is no logic and there is no rationale. We all know once again that this is strictly a political dynamic which has no reference whatsoever to what is really substantively required or needed in the marketplace.

The other point which the Solicitor General indicated in that particular communiqué was the provision which would allow any member of the public to take steps to enforce what are felt to be contraventions of this particular legislation. Once again he let the chambers of commerce off the hook. How, under the present circumstances, can anyone justify dumping Sunday shopping issues on the courts? Surely it will happen.

You people in the NDP caucus know what discussions and comments took place in your caucus. You know why these particular provisions were put in. They were put in there as a concession to people who support an absolute common pause day. You went into your caucus and you said, "We have all these people to whom we made a promise that we were going to have a common pause day and

now they are very upset with us because the process is not tight enough."

So you said, "Well, we will fix that political group up"—because that is what it is, a political lobby group. "We will say to them: 'You can run around the province like a bunch of vigilantes and you can oppose every single bylaw that is passed by any municipality and bring it to the Ontario Municipal Board. Not only that'—this to the special-interest group that has lobbied us in the NDP caucus—"but if you think we are not enforcing it, you will have the right to take it to court and you can enforce it yourselves. You can go to all your common pause day groups, your church groups, you can have fund-raisers and you can have a legal fund to fight Sunday openings in municipalities."

It is absolutely conceivable, and perhaps likely, that the common pause day coalitions will have regular fund-raising and, as a matter of course, a policy of filing objections to every bylaw in the city. I am not making what I feel is an irresponsible statement when I predict that is a likelihood or a strong possibility. If it is not carte blanche across the province, it will be in pockets, but it will be organized and it will be well funded.

You have to ask yourselves what that will do to the small communities where you have small retailers, mom-and-pop operations, which are going to have to hire lawyers and consultants to go to the Ontario Municipal Board and defend them in court. Where is the NDP fairness for the little guy?

The Bay, Eaton's, Pharma Plus and Shoppers Drug Mart will have their lawyers and their consultants and they can handle the Ontario Municipal Board, but what are you going to do for your constituents, the little guy in Prescott and Russell, your small motel? Are you going to provide subsidies now so they can defend these matters at the Ontario Municipal Board?

What you have done is to make a very strategic political mistake by jumping into this issue with all fours. You know yourselves—and your caucus and your cabinet knows—that you have been floundering all over the place trying to appease this group and that group, raising one objection or another. You are going around with a bunch of Band-Aids trying to fix this legislation. The issue is, how responsible are you being as a government? By taking this legislation and trying to whip it through full of Band-Aids, when we know particularly the provisions which require appeals, which give a right to appeal to the Ontario Municipal Board—

**Mr Mills:** Dylex will phone you tomorrow. It was delayed. You will get the message.

**Mr Chiarelli:** I am happy to hear messages from anybody, but if you want to defend the interests of Dylex, Mr Mills, that is your prerogative. If you are gloating in your NDP caucus because Dylex has issued a press release saying it loves this amendment, you can have the Dylex constituency, but there is a whole constituency, namely the people in the province of Ontario, who are going to be tied up in knots.

They are going to be knocking down your doors. If you think there is a problem at the Ontario Municipal Board



now, and if you think that to get affordable housing on market now you are trying to expedite matters at the Ontario Municipal Board, you can put another six or 10 months on every single affordable housing project going to the Ontario Municipal Board because you are going to be inundated with Sunday shopping bylaws. You are going to so devastate the process at the Ontario Municipal Board that you will have to throw millions of dollars at it.

Mr Mills made an off-the-record comment that it will be under \$1 million to subsidize the Ontario Municipal Board to handle this type of issue. You are dreaming in Technicolor, and you are going to have to dream in green Technicolor, because there will have to be so many greenbacks to go to Mr Kruger to satisfy his concerns and the concerns of every mayor.

I cannot believe the Solicitor General, as a former mayor of a municipality, does not understand. I am glad the Solicitor General is walking back in, because as a mayor of a municipality, he knows the concerns of people in every walk of life with respect to the problems at the Ontario Municipal Board.

1710

I do not know whether the Solicitor General has taken the time to read Mr Kruger's comments before the standing committee on government agencies on Tuesday, January 22, 1991. That is this year. I just want to bring to the Solicitor General's attention some of Mr Kruger's comments at that time. I am reading from page A-61, the Hansard of Tuesday, January 22, 1991. The chairman of the Ontario Municipal Board, Mr Kruger:

"When I became the chairman of the board, the first thing that we called for was a consultant's report. We saw that there were difficulties. This was recognized by the board and that produced this report. It was done by an outside consulting firm, the Coopers and Lybrand group, and it took a look at every single thing the board did.

"There were some criticisms of that. They said: 'Some of the methods and procedures you've got, you've got a terrible backlog. You've got to change some of your procedures and the way of the past. You have to change some of these things.' They also highlighted that the backlog was not going to go away and in fact it was going to get worse.

"It takes 18 months to train a member of the board."

I think it is important to keep in mind that when the chairman of the Ontario Municipal Board says it takes 18 months to train a member of the board, you have to ask yourself, even if this government makes dollars available to the Ontario Municipal Board to cover appeals which are going to be emanating immediately—you are saying you want this legislation through before Christmas; in fact, before December starts. That means the appeals will start in December, January or February. That means the backlog at the Ontario Municipal Board is going to be very significantly increased long before any of these people are trained with the moneys that you might give the Ontario Municipal Board. You are going to have a tremendous backlog, at least for 18 months, as all these Sunday shopping amendments add on top of the current backlog.

In any case, to go on further and indicate what Mr Kruger was saying on that particular day:

"It takes 18 months to train a member of the board. They have to be trained and they have to understand rules of practice and procedures and so forth. Being a lawyer is of some help, but if you do not have skilled municipal experience, it is not much of a help. So it takes 18 months to get them on stream, and within the next two years we are going to have six members retire. One member retired on December 31 and has not been replaced. I have another member whose time is up who will retire in June. I have another member who retires in September of this year. I have another member who will probably retire in June because the 90-and-out has the pensions. I have a member who will retire early in 1992 and I have one other member who is ill and we are not too sure if that member is not wanting to retire towards the end of this year.

"We have suggested to the government that we want to increase our complement of 30 so that we can get these people trained and then within two years we will be back to 30."

Without Sunday shopping appeals at the Ontario Municipal Board, Mr Kruger, who is the chairman, is saying he hopes to be able to get back up to speed within two years. We have to keep in mind that Mr Kruger was making this statement before these amendments were introduced.

I see Mr Morrow over there. He knows what I am talking about. He knows that I have seen the Hamilton Spectator article and his concerns about the Ontario Municipal Board. But the fact of the matter is that Mr Morrow is correct and I am correct and Mr Kruger is correct, and the Solicitor General knows the Ontario Municipal Board is not going to be able to handle these unless you have an answer from Kruger as to what amount of resources he needs to get up to speed. That is an issue, as you well know, quite apart from appeals from Sunday shopping bylaws. There is a tremendous backlog at the Ontario Municipal Board.

As a municipal politician, as a mayor, you know the problems, and you know you are dumping Sunday shopping on to them. You know how many people and resources you are going to have to add to the Ontario Municipal Board for you to legitimately respect your promise and undertaking to try to have these appeals dealt with in 90 days, and you are not saying how many because you do not want to scare the dickens out of everybody.

You know what Kruger thinks. I will be very surprised if you have not heard from Kruger. If you have not heard from Kruger, you should make it your own business to get on the phone and talk to him about these amendments and what resources he will need. He said here on January 22, 1991, that significantly increasing his complement, he might get up to speed in two years, without any reference to Sunday shopping.

There is a strong element of politics and irresponsibility in dumping this issue on the Ontario Municipal Board. You have a commitment as a government to affordable housing. You as caucus and cabinet members have decided to fast-track any affordable housing issue at the Ontario Municipal Board. You are going to slow down your

affordable housing initiatives. There is no question. It is so clear that someone with the experience and the credibility of John Kruger will stand up and say that without Sunday shopping in effect, it will take two years to get up to speed. Even the commitment to speed up affordable housing is not being met now because they do not have the resources to do so. It is on record all over the place from people who are experienced and knowledgeable. You know you cannot do it. You are being very political and very irresponsible to the process.

If you can come in here and tell this committee, the people of Ontario and all the planners, municipalities and councillors across the province that you are going to streamline the Ontario Municipal Board and you are going to give it resources, then that is fine, that is part of the equation and I would not be here debating the issue the way I am. But unless and until you have an answer to the Ontario Municipal Board process, you are being totally

irresponsible, illogical and unfair to the people of this province, because it simply will not work.

If you go to caucus and you basically have made a decision that in order to appease the common pause day coalitions you are going to throw this in, then it is a very bad and sad day for the province of Ontario.

Interjection.

**Mr Chiarelli:** It has been suggested to me that there are some other activities which are going on in the Legislature today and there seems to be a consensus that we should adjourn today at 5:15. I think I have overstayed my welcome by at least four minutes, if not 44 minutes. In any case, I move adjournment of the debate until tomorrow at 3:30 or the end of routine proceedings. I intend to continue at that time, Mr Chairman.

**The Chair:** We are adjourned until 3:30 tomorrow.  
The committee adjourned at 1719.



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Monday 28 October 1991

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** Cooper, Mike (Kitchener-Wilmot NDP)

**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)

Carter, Jenny (Peterborough NDP)

Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathysen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Wininger, David (London South NDP)

**Also taking part:** Callahan, Robert V. (Brampton South L)

**Clerk:** Freedman, Lisa

**Staff:** Beecroft, Doug, Research Officer, Legislative Research Service











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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 29 October 1991

## Journal des débats (Hansard)

Le mardi 29 octobre 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 29 October 1991

The committee met at 1554 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** I call this meeting to order. We are debating Liberal motion 3.

Section/article 1:

**Mr Chiarelli:** Just to review very briefly where we left off, we are dealing with section 1 of the bill, and my colleague Mr Sorbara moved an amendment. His motion was that subsection 4(1) of the act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

"(1) Despite section 2, the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism, for economic development purposes or for any other purpose prescribed by the regulations made under this section."

I want to compliment my colleague for moving this particular amendment, because what it does is put the whole issue of Sunday openings or Sunday closings into proper perspective. As I mentioned yesterday, when one looks at the history of this type of legislation, when you look at the pre-1988 or -1989 law, which had been there for a number of years and was established by the Conservative government, there was not really a significant disruption in the marketplace and there was not a lot of lobbying and it was not a high-profile political issue. There were representations made from time to time to the government of the day looking for improvements or changes to that legislation, as with many others, but the fact is that the law was not a perfect law and had flaws in it, and the marketplace adjusted to the law, which was not very precise.

In effect, it provided for a tourism exemption, but there were no criteria to define "tourism" and we had what amounted to the local option. The local option basically permitted municipalities right across this whole province to have Sunday openings. For example, in Ottawa-Carleton, under the old Conservative law, a bylaw was passed to open up the Byward Market on Sundays. It worked very well and there were not any further openings. For Ottawa, that

was fine. It amounted to an opening in that area that really went way beyond anything that could be defined as a tourism exemption. Many municipalities, as we all well know, opened on Sundays through that particular legislation.

When the Liberals came into government, we looked at making changes to this law. We did make changes to the law. We took the tourism exemption, which was being widely abused, and we got rid of the fiction that there really was a tourism exemption. We said, "The tourism exemption is being used as a local option, so let's call it the local option," and we legislated the local option.

The marketplace continued to work; the sky did not fall. Some people were unhappy, as some people are unhappy with just about any piece of legislation that any government enacts. Of course, some of the people who were unhappy decided to take court proceedings. They did so, and the law was struck down by the Supreme Court of Ontario. What happened when the law broke down? The sky still did not fall, the world continued and we had some people in some communities who opened on Sundays and some who decided not to open. In effect, what you had, again, was the local option.

1600

Now we are looking at a new set of rules, if we can call it that. What do these rules do? These rules pander to special interest groups. There was a principle: to have a common pause day. That was a principle of the New Democratic government's election promises, and it was the promise when legislation was introduced. The fact of the matter is that you introduced legislation, you went out and consulted with the people, and what did the people tell you? Can you decipher what they told you? You deciphered the special interest needs of a group of people and you are at a loss what to do with it. In fact, you did not know what to do with it and so you came to this committee and you said: "Let's adjourn it indefinitely because we don't know what to do with clause-by-clause. We have to consult further and assess the situation."

Really what you had to do was resolve your internal differences in your caucus, because you know that you had a very active debate in your caucus on this particular issue. I can remember specifically talking to Peter North, the Minister of Tourism and Recreation, and he was saying: "I'm the advocate of broadening openings for the business community. I'm doing the best I can in cabinet for this particular issue, but there are some people on the other side of the issue. I'm sorry, but this is the best I can do."

So we know that you had very significant internal problems. At the same time as you had those internal problems your phones were ringing off the hook. We know what it is like when you are in government, when you are in a constituency office and the lobby groups start: the common pause day people, the large drugstore people—

you name it; it goes on for ever—The border communities that wanted wide-open Sunday shopping, mayors from various municipalities. It started. So what you did was try to take a bill and patch it up to meet all the special interest groups. What you have created is a total can of worms that is ineffectual, illogical and will never work. The amendment my colleague has moved is an attempt to alleviate that somewhat, because you are creating a legal fiction once again.

As I mentioned, there was a legal fiction with the Tory bill. We tried to get away with our bill by calling it what it really amounts to in practice, local option, and now you are going back to what is going to amount to a different type of local option, if we can figure out what you mean, because you can change the rules any day by regulation. That is something I want to address as well.

I can remember quite specifically, when I sat on this committee on the government side and we travelled around the province with our legislation, a member from the New Democratic Party caucus, Mike Farnan, who became the Solicitor General and who had something to do with introducing this particular legislation. Some of you may have seen it, some of you may have chuckled when he brought his little chicken around with him and he put it up here.

Actually, I just bumped into Mike in the washroom and I asked him if he still had his chicken and he said, "Yes, I do." I said, "Can I borrow it?" He said: "No. That is a piece of history and I'm not going to let it out of my possession." I wanted to borrow that little chicken because, believe me, you guys are taking the chicken way out. You are taking the chicken way out because you finished your cross-province hearings and you sat down and you could not come to clause-by-clause analysis because you had all these competing forces in your caucus and you had all these competing forces lobbying. Then, all of a sudden, you decided internally: "My gosh, we do have the answer to the common pause day people. We will let them set up vigilante committees." These vigilante committees can go around appealing every bylaw to the Ontario Municipal Board. Not only can they do that, but they can raise funds and take to count any little shopkeeper who may misinterpret the law, may feel that he has the right to some civil disobedience because this law does not even give him or her the right to appeal, which is appalling. They can go around in their vigilante groups and take these people to court.

**Interjection:** Take them hostage.

**Mr Chiarelli:** Take them hostage, somebody said.

The Solicitor General brought in some amendments. In the news release September 27, 1991—that is a month ago, plus a couple of days—he did not say a darn thing about opening in December.

I remember he stood up in the Legislature and said: "We are ready to proceed now. We've got our act together." We raised some questions about his amendments. Before we could even deal with these amendments he came in and said, "We have a new answer." I guess there were a few more phone calls made by people like Dylex, and this government is so paranoid over its position with business that it takes a little concession to Dylex working with the business community, forgetting about all the other

people who are concerned about different aspects of this particular legislation.

**Mr Morrow:** On a point of order, Mr Chair: I would appreciate it if the member would come back to the amendment. It is nice that we are listening too to the government, but I would appreciate it if he would come back to the amendment.

**Mr Chiarelli:** I am speaking to the amendment in some detail.

**Mr Morrow:** Is 4.3 the amendment? This is the amendment.

**Mr Chiarelli:** I am speaking to Mr Sorbara's amendment. I really believe that last interjection is an indication that the government wants to get this bill through very quickly without debate. The issues that are raised by amendments which are foisted upon the public and this committee—the implications are very significant. The issues should be discussed and should be debated in some detail.

The amendment says "the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism, for economic development purposes or for any other purpose prescribed by the regulations made under this section."

The purpose of that particular amendment is to move beyond merely a tourism exemption. I want to relate my experience in the Ottawa area with the legislation that has existed and how this particular amendment might affect it.

I can recall very specifically when the standing committee on administration of justice, discussing the previous legislation in its travels around the province, came to Ottawa-Carleton. As I mentioned, there was only one provision for Sunday openings under the Conservative legislation, and for an extensive period of time, in fact up until today, that was in the Byward Market. There was no expansion of Sunday openings whatsoever in Ottawa-Carleton in any way, shape or form under the Conservative legislation.

1610

We called the Conservative legislation what it was: a local option. Additionally, there was no further expansion under the Liberal legislation. The courts struck down the Liberal legislation. I think it is important to look at the dynamics of what happened in Ottawa-Carleton when you look at the implications of expanding the tourism exemption to include the other areas which indicate "for economic development purposes or for any other purpose prescribed by the regulations made under this section."

It is really very instructive to look at what happened in the marketplace after the law had been struck down. There are a number of major shopping centres in the Ottawa-Carleton area, as there are in all the urban areas across this province. What happened, particularly with the Bayshore Shopping Centre, which is among the largest if not the largest, was that the landlord, sure enough, was trying to cajole and push the tenants into opening on Sunday. The tenants, small business people, retailers, were very unhappy. They did not want to open on Sunday under any circumstances. Some of them did open, perhaps because they felt intimidated by the landlord, and some of them did not.



After a number of Sundays on which the Bayshore Shopping Centre had been open, the manager of Bayshore called on the managers of the various shopping centres to agree collectively to close on Sunday because they were losing money and it did not make economic sense for them to be open on Sunday. The market circumstances, namely, the de facto local option, were telling these major shopping centres, these major landlords, who a few weeks before were saying, "We want to open," and tried to force the retail tenants to open, to turn around and reverse themselves. They were losing money on Sunday openings. Mr Belanger in particular, who was the manager of the Bayshore Shopping Centre, tried to get the manager of the St Laurent Shopping Centre and the Carlingwood Shopping Centres together to close, to force the closings. In fact, the major shopping centres, with no legislation in Ottawa-Carleton, were voluntarily closing on Sunday because of the market conditions, because of the representations that were coming from the retailers in the area.

I believe that if the legislation were still struck down these shopping centres and the retailers in them probably would be opening as we come into the Christmas season. As I mentioned before, when we look at the context of this legislation through the Conservative administration, through the Liberal administration and when there was no law whatsoever, we find that the market seems to look after itself, and there was no domino effect. In fact, the domino effect was in the other direction, towards closings.

What I am trying to say is that you have taken a bill and you are trying to play God with it. You are trying to placate this group; you are trying to placate that group. You have the common pause people who are saying, "Give us something to hang our hats on," so you say: "Fine. You can be a vigilante group. You can appeal them all to the OMB." If some little retailer feels he is being unfairly dealt with by this legislation and decides to stay open, by gosh, one of these common pause day groups will simply take that small business person to court and force him to close, force him to pay a fine. We have to put more logic and more common sense into the process.

I will come back to the issue of the Ontario Municipal Board a little later, but there is an issue that is reflected in your legislation, which provides for establishing tourism exemption criteria by regulation.

We all know what regulations can do. They can drive people to insanity almost. For example, the member for Welland-Thorold on his cable show a couple of weeks ago talked about some ninnies who passed a regulation eliminating or changing the oath to the Queen for the OPP. That was done behind closed doors. It was done basically without any public consultation.

By saying you are going to establish the tourism exemption by regulation, I want you to understand what you are saying to the common pause day people who take you at face value. You are saying to the representatives of these coalitions, the people who want to maintain a common pause day, that in the dead of night you, by regulation, can effectively create wide-open Sundays. You can also say to the other people who want some semblance of openings

that you are going to close them down cold by regulation. Cabinet can meet and cabinet can pass an order in council.

You can say: "We will deal with it reasonably. We will deal with it as a wise emperor would deal with it." But the fact is that you can deal with it by regulation. You can turn around next month or next year and say to these common pause people, "There is an economic crisis—there are all kinds of reasons—we are going to change the criteria," and you can change the criteria to effectively create a wide-open local option. They would have nothing to say about it because you can do it without consultation. You can do it by regulation. If you want to create a common pause day and you want a tourism exemption, you can do it simply by—

**Mr Mills:** On a point of order, Mr Chair: I would like to ask a question. I have been led to believe, Mr Chiarelli—correct me if I am wrong—that both your party and the third party have agreed to get this bill through quickly. This is my understanding. I wonder where we have gone wrong.

**The Vice-Chair:** That is not a point of order, Mr Mills.

**Mr Chiarelli:** I would like to respond quite directly to Mr Mills on that particular point. Mr Mills, I would like you to listen to my answer; you asked a question. You have two or three courageous people in your caucus who are prepared to stand up and publicly disagree with their party. The member for Welland-Thorold has publicly disagreed with his party on the cable show and in other circumstances, and the Vice-Chairman, Mr Morrow, did in the Hamilton Spectator, I believe, with respect to the implications for the OMB.

I am not a puppet for my party, and when I talk about these issues, I talk about them with conviction and I mean what I say. If I am long-winded, it might be that I am trying to get some of the people on this committee to understand, over a period of time, that there are some very serious implications.

**Mr Mills:** The retailers are looking for us to get on with it.

**Mr Chiarelli:** You might think that all the retailers are, but they are not. I have not received very many calls in my constituency office from the time you introduced your legislation until now, even at the time our legislation was struck down. There is a lot of activity in the media but very little in—maybe because we are in opposition now they do not call the opposition members but only call the members on the government side.

It was not until the last few days that my constituency office started receiving phone calls from retailers who do not want to open on Sunday even in December. Even though Dylex might be lobbying you and you might be pandering to another lobby group, there are other retailers out there who do not like what you are doing in terms of opening up in December.

**Mr Mills:** Listen to your whip.

1620

**Mr Chiarelli:** I am debating this issue on the merits as I see them. I am not in here doing anybody's bidding, including my whip's. I might even be the whip now, I do

not know. Somebody talked about changing the whip in this committee. But in any case, that is the answer to your question. I do not know of any decision to expedite this particular decision.

I want to remind you, Mr Mills, and I think it is very significant, that I spoke to this issue at some length after the news release of the Solicitor General talking about the Ontario Municipal Board appeals and the appeals to the court. If you will read Hansard carefully, you will see that I said, with respect to that provision of the bill, that I would see this pass over my dead body, because I thought it was bad administration and bad government. I am going to deal with that as well, because it has something to do with this particular amendment.

The fact that you would make a compromise for retailers for three Sundays in December does not make me make a compromise to that component of the bill dealing with the appeal process, which is contrary to civil liberties in the grossest possible way, giving some people a right to appeal and not others, and totally imposing a matter on an agency that cannot handle the volume of business it has at present.

So to answer your question, I have not agreed as a member of this committee to anything and I have not agreed to pander to my whip or my party on this particular issue, because I think there are some issues which go well beyond that type of issue in this particular case.

Beforehand I was talking about the provision in the bill which gives the Solicitor General or a cabinet committee the right to create wide-open Sunday shopping or to create a 100% common pause day. This bill does that. I see some people sitting here in the committee room who are very concerned about a common pause day.

As I said before, I respect that position, I respect it very much, but I also respect their right to be treated fairly, and they are not being treated fairly by this bill. They are not being treated fairly by this bill because they are going to walk out when this bill is passed, if it is ever passed, and they are going to think they have won some concessions. All they have won is the right of this government to act like a dictator and emperor in the dead of night, to change the tourism criteria, to create wide-open Sunday shopping or to turn around to the Dylexes and next year close down Sundays because they have decided that maybe the phone is ringing more than it was two weeks before and some lobby group is looking for something.

They will just get the cabinet together—actually, the cabinet will not get together until the caucus does a hammer job on them, because this cabinet obviously responds to the caucus. The caucus comes in and makes representations and takes decisions and cabinet goes back and deals with them. Every time the caucus makes a decision and flexes its muscles and the cabinet gets together, out comes the Band-Aid. The Band-Aid goes on the bill. You figure you are going to come in and do a hammer job on the opposition because we are real mean people, we are going to frustrate you every step of the way. It does not matter what we say and what we do, that is how you are going to characterize us. In fact, I think people are a lot more objective than perhaps you make them out to be.

For example, I have this little sheet of paper in my hand which indicates an advisory group of the tourism exemption regulation. It has chair, Mr Andrew Faas, executive vice-president, National Grocers Co Ltd; members: Mr Barry Agnew, vice-president, sales and promotion, the Bay; his worship Stephen Clark, mayor of Brockville; Mr John J. Finlay, executive vice-president, Canadian Retail Hardware Association; Ms Diane Karabinos, executive director, Ontario Hotel and Motel Association; Ms Sharon Maloney, president, Canadian Shoe Retailers Association; Ms Pearl MacKay, Ontario Federation of Labour; Mr Gerald Vandezande, executive director, Fairness for Families, and Mr Brian Williamson, president, Local 1977, United Food and Commercial Workers International Union.

I think it should be understood that this advisory group can be changed next month, can be changed next January, could be changed, abolished or whatever. Not only that, this group, to my understanding, and perhaps the Solicitor General can clarify, has not met yet. If it has met, it may have met for an organizational meeting.

Mr Mills says, "I understand that you people have agreed or there's some tacit understanding that we're going to whip this thing through so that the people who are interested in three days of sales in December will be appeased." I think the issues go way beyond appeasing retailers for three days of sales during the month of December because perhaps people are not fully cognizant of what these regulations can do.

We have a number of people whose names I have read, who represent the advisory group on tourism exemption. I say to the people who are interested in this particular issue, what if the majority of people on this committee, or the restructured committee, or the expanded committee, decides it wants to have more open Sunday shopping? This government is very concerned about its reputation and perception in the business community. Let's say there is tremendous pressure brought to bear on this government and it wants to look at a way to pander to the business representations that it is getting, because it might be down to 26% in the polls, they might have another major rally out here. So in the dead of night this advisory group on the tourism exemption regulation is expanded; a few more people are put on to it. They look at the tourism criteria—there are drafts around here—they just decide to play around with it. The tourism advisory committee decides, "Well, let's try to open up Sundays a bit." They open up—

**Mr Mills:** You are putting them to sleep.

**Mr Chiarelli:** No, they are walking, they are not asleep. They are getting tired of the interjections.

I can still see one gentleman who is very interested in hearing what I have to say, because he has seen this issue come and go through governments and lobby groups and so on and so forth. I respect the fact that he has the consistency to be there year in and year out. He also knows how governments operate and he also knows how governments play games.

Under circumstances where there might be a tremendous amount of pressure, more pressure, put on the government to widen retail sales on Sunday—for example, what if the



mayors or the merchants in border communities say: "I've looked at that advisory committee and there's insignificant representation for border communities. There is nobody from Windsor, there is nobody from the northern border communities. All we have is one representative, his worship Stephen Clark, mayor of Brockville." So a few more people get added to this advisory group because they felt left out. They start monkeying around with the tourism criteria. Again, you have to understand, it could be changed by regulation any time. It does not even have to go into the Legislature, no notice, no nothing. Order in council, bang, it is the law—the same as you changed the oath, regardless of who wanted to do it. That is how it was done, and that is why people were surprised.

1630

Mr Gerald Vandezande on January 4, 1991 calls a press conference here and he is upset. He is upset because they have expanded this committee and put people on from border communities and they want in effect to expand Sunday openings by way of changing the tourism exemption. He feels totally doublecrossed. Like Chamberlain he was waving the pact, "Peace in our time," and in four months Hitler has come in. He has been totally betrayed, because they are expanding Sundays as a result of the advisory group.

This government can with legitimacy then say: "We have this bill that is passed, Bill 115. It provides for a tourism exemption. We are a good government, we have really consulted the people. We have even expanded the committee, and the committee is recommending this type of regulation." Your common pause day, poof, is gone. That is what happens.

This regulation should be made a section of the bill. I say to you on the government side and I say to people who want some semblance of a common pause day, why are the criteria not in the bill? Why? Answer the question, why are the tourism criteria not in the bill? So they can be changed. And why should they be changed? They would be changed to pander to the lobby groups, and because you are playing politics with the issue. The Solicitor General and his chicken introduced this bill and introduced this chicken way out, because you know darned well that once this bill is passed and you have the regulations, you are going to play around with them until the cows come home. There is no way you are going to want to bring an amendment into the Legislature and come before this committee and have these people here cross-examining you on what you are doing with the regulation.

There is a body of legal thought, which is growing every day, that deals with the issue of regulation. It says governments at every level are hijacking the Legislature by regulation. You have heard the argument. This is a prime example of a hijacking of legislative authority from the Legislature and from the people, because you can, without going back to the people, without going back to the Legislature, without coming back to this committee, create wide-open Sunday shopping by changing the criteria. You can put some semblance of consultation on it by restructuring your advisory committee.

It is the most blatant, chicken way out of an issue I have ever seen. It is appalling that the members of this

committee would sit there and accuse me of filibustering and delaying this legislation and hurting those retailers who want to sell for three days. They say I ought not to be able to bring this issue to the attention of the people who care about it, on both sides. This legislation is worth that, as long as you have a regulation that allows you to create wide-open Sunday shopping.

The Solicitor General knows what I am talking about. And his predecessor, the architect of the chicken, knows more about the chicken way out than anybody else. I do not think anybody else on the government side should knock anybody on the opposition side for taking the time to debate this type of issue in detail and at great length, because it is very significant. We are not going to play to your political agenda, because your history with this bill is nothing but a political patchwork, Band-Aid solutions created by panicking caucus members and a panicking cabinet.

**Mr Mills:** It says here that you are going to get on with it. That is wrong? Okay, as long as we know.

**Mr Chiarelli:** I will ask Mr Mills, does Mr Kormos speak for you?

**Mr Mills:** I can still get into the process. The whip is running it and he said we are going to get on with it, and I am just wondering where it all fits in, as a newcomer.

**Mr Chiarelli:** You guys are doing a good job of trying to manipulate the public and manipulate the media. Thank God there are some honest, straightforward, straight-talking people in your caucus like Mr Kormos, who calls a spade a spade. I am going to try to call a spade a spade. My whip is not going to tell me what I should or should not say, because I think these people here are interested in knowing what a sham it is that you can create wide-open Sunday shopping simply by changing a regulation. That is the reality. You cannot deny that you have the absolute authority to create wide-open Sunday shopping without notice, without committee, without Legislature. True or false? You have a solicitor sitting here. You have the Solicitor General here—he knows it can be done, I know it can be done, the people have to know it can be done.

I want to make a couple of additional points. I think it is very relevant to the amendment that my colleague Mr Sorbara has moved that in addition to simply reading "for the maintenance or development of tourism," he would add "for economic development purposes or for any other purpose prescribed by the regulations made under this section." What we are talking about here is provincial criteria for Sunday openings.

We are not talking strictly about passing a bylaw such as a zoning bylaw for municipal purposes. We have taken a municipal council, or every municipal council across this province, and we have expanded their legal authority in how they deal with issues. They will normally pass bylaws in the normal course for zoning, etc. What we have now done is make municipal councils into quasi-judicial bodies, because they evaluate tourism exemption applications against the provincial tourism criteria.

I see there is a quorum call in the House and I guess there is as much interest on the government side in listening to the opposition in the House as to this committee.

**Mr Mills:** You are killing me.

**Mr Winner:** Yes, show some mercy.

1640

**Mr Chiarelli:** Can you guys hear me over the bells? Excuse me—you guys and gals.

What we have done is take municipalities and expand their legal authority so that they now have to assess provincial criteria when they make the decisions. It also creates the legal effect that their decisions can probably be appealed to the courts, so it is possible for all decisions to end up in court, at great expense to retailers, the municipality, and ultimately the taxpayer.

Just to make perfectly clear what I am saying, when a body has some legal authority to make decisions based on criteria such as these imposed by the province, you open it up for appeal and review to the courts. The Solicitor General's amendments providing appeals to the Ontario Municipal Board and expanding access to the courts for enforcement will not only impact very significantly on the communities across this province, but will also have the very decisions made in council subject to the courts.

Why should this be permitted? I ask members of this committee on the government side, have you discussed that technicality in caucus? Does your caucus understand the implications of your criteria?

To add to my previous comments on the hijacking of legal authority on this particular issue by way of regulation, there are people in Ontario today, and there may be people in this room today, who think they have a certainty emanating from this legislation. Nothing could be further from the truth. The regulations heralded with great fanfare when the former Solicitor General, Mr Farnan, introduced the legislation and the draft bylaws on tourism criteria looked good to a lot of people. They do not mean a hill of beans. They are not incorporated in the bill which this government wants to pass tomorrow or the next day.

The tourism criteria still must be fixed. Thus, several days ago there was no Dylex amendment and now we have a Dylex amendment—three days of Sunday shopping have wormed them into the bill. What the people of Ontario do not know is what will worm its way into the draft regulation.

How will the advisory committee change? What battles will take place on that advisory committee? What will happen if, after the second or third meeting of this so-called advisory group and before the regulation is passed, Barry Agnew, vice-president, sales and promotion of the Bay, and perhaps one of the other members of the group call a press conference at Queen's Park and indicate that the group is a sham and is not going to work, and demand that it be properly structured?

What you then have is a bill and no regulation. You have a political football put out there in the open again. You have the counsel to the ministry sitting there scratching his head—I think he has less hair than the last time I saw him when we were going through this committee—particularly when all these regulations are brought back to him time and time and time again.

**Mr Winner:** We are all losing our hair.

**Mr Mills:** I am losing my hair.

**Mr Chiarelli:** Maybe you will be able to buy a hair-piece on a Sunday somewhere, some time.

**Mr Winner:** I think you are splitting hairs.

**Mr Chiarelli:** That is a bald-faced lie.

I lost my train of thought here, Mr Chairman. I want to get back to my notes.

MPPs in the last Legislature, I relate it back to my community, because, like all we went through a very harrowing experience with this legislation. The government of the day did not perhaps deal with the issue from a communication point of view as well as it could have. Perhaps there were some aspects of the bill which could have been done differently.

At the time we were dealing with this in the last government, the people in my community of Ottawa-Carleton were absolutely opposed to wide-open Sunday shopping, and I agreed with them. First, they did not understand that under the tourism exemption of the Conservative legislation, the city council of Ottawa could have passed a bylaw declaring the whole city a tourism location or destination, which surely it is. We have people coming to Ottawa from all over the world. It is an international destination in many respects.

There are all kinds of attractions over the whole area of Ottawa and Ottawa-Carleton which relate to Ottawa as the capital of Canada, so the council of the city of Ottawa had every justification, under the pre-Liberal legislation, to pass a bylaw declaring Ottawa a tourism destination. It did no such thing. It passed one minor bylaw which declared that the Byward Market area of downtown Ottawa, a whole four or five blocks in behind Parliament Hill near the Chateau Laurier, could be open on Sundays. There was no movement of the business community, in any way, shape or form, to expand that. There was, in effect, no domino effect.

**Mr Mills:** You said that three times already.

**Mr Chiarelli:** Twice.

**Mr Mills:** This is the third.

**Mr Chiarelli:** This is the third time, but it is in a different context. I am doing it in the context of the pre-Liberal legislation. I am trying to create some historical context for the present amendment.

When later the Liberal legislation was passed, or while it was being considered, there was a resolution of the council of the regional municipality of Ottawa-Carleton which said, "There is no intention or desire to expand Sunday openings in Ottawa-Carleton," even though they were about to get the legislative authority to do it under the local option.

1650

They could have done it under the tourism exemption, and chose not to. They could have done it under the local option of the Liberal legislation, and chose not to. As a matter of fact, one application was made to regional council by a small neighbourhood in my riding of Ottawa West, the Westboro area, where they have what is called Westboro Days one weekend of the year. The retailers in that community, which represents three blocks, both sides of the street, made an application to regional council to open one Sunday a year and they were turned down cold



by the regional municipality of Ottawa-Carleton; no expansion whatsoever.

I want to tell people who are interested in a common pause day what happened in Ottawa-Carleton when the Solicitor General made his announcement of the NDP initiative. It is all on record. I went through it as a member of the standing committee on administration of justice when the Liberal legislation was going through. I had representation after representation coming to my constituency office. I know the facts and I know the dynamics of this issue in Ottawa-Carleton.

When the Solicitor General introduced his new legislation saying we are going to have a tourism criteria and tourism regulation, lo and behold, all of a sudden all these business people started coming out of the woodwork—these neighbourhood trade groups. All of a sudden you had people from the Sparks Street Mall authority saying: “You are going to have a specific tourism exemption. Why don’t we have a tourism exemption for the Sparks Street Mall?” We had people in Nepean coming out and saying, “Why don’t we have a tourism exemption for this particular geographical area?” We had people from the Rideau Centre in the downtown core saying, “Why don’t we expand it?” One of the morals of the story is, let a sleeping dog lie.

We had the tourism exemption under the Conservative legislation which created no expansion of Sunday shopping. We had the Liberal legislation which created the local option, which created no expansion of Sunday shopping; none whatever. In fact one neighbourhood, for three hours one Sunday a year, was turned down cold.

When this was introduced I was absolutely flabbergasted. They were coming out of the woodwork looking for tourism exemptions. I was absolutely mind-boggled that this community, which was prepared to respect the whole regional municipality of Ottawa-Carleton—650,000 plus, 11 municipalities, every single one of which wanted to have a common pause day and have the Byward Market as the only opening on Sunday, were coming out of the woodwork looking for exemptions.

The media was going to them and asking what they thought of the Solicitor General’s legislation. They were all saying, “I think we should do this tourism exemption and that tourism exemption.” You had a domino effect coming from the Solicitor General’s common pause day legislation.

The biggest moral to this story is—

**Mr Winninger:** You are running out of dominoes.

**Mr Chiarelli:** I am not talking dominoes.

Mr Chairman, I represent the people of Ottawa-Carleton. The comments I have just expanded on reflect the dynamics, feelings and the thoughts of the people in my constituency of Ottawa West and my broader constituency of Ottawa-Carleton. The 650,000 constituents in Ottawa-Carleton are getting zero representation from this government because your member, Evelyn Gigantes, is like a mouse in the corner on every damned issue the people are concerned about.

I defy you to find one darn quote in any media or electronic media on what Evelyn Gigantes is saying on Sunday shopping, housing or on all these issues of concern

to the people, because she is hiding in the corner and because she has written off Ottawa-Carleton and she is only looking after her Ottawa Centre riding, which incidentally, because the Solicitor General introduced this legislation, is going to have a hell of a lot more Sunday openings which it did not have before.

You want to shut me up from representing the constituents of Ottawa and Ottawa-Carleton? Well, forget it, chums. I am going to be here and I am going to talk about it and I am going to continue to talk about it because it is important to people that they be represented if they are not going to be represented, particularly, by your mouse in the corner, Evelyn Gigantes. There is no representation in this government for the NDP in Ottawa-Carleton.

**Mr Mills:** I am not trying to shut you up. I just want to know, what is the point of view?

**The Chair:** Mr Chiarelli has the floor. You will have your opportunity later.

**Mr Winninger:** Did you attend the Greg Sorbara school of debating?

**Mr Chiarelli:** It might have something to do with our ancestry. I am just testing the equipment here, because it does not always get tested.

I want to get back to the issue of the quasi-judicial nature of the decisions that are being requested from municipal councils across the province. The issue is certainly that because there is a certain set of provincial criteria which must be adhered to, the decisions of councils will be subject to review in the courts. That is number one. Perhaps that was even the rationale for the Solicitor General’s amendments, which he referred to on September 27.

Yesterday I was starting to refer to the significance of those amendments, and I understand through certain whisperings from Mr Mills and from the Solicitor General that the issue of the workload of the Ontario Municipal Board will be dealt with. Nothing has been said in the House and nothing has been said on the record anywhere that issue will be dealt with, and until it is dealt with it is something that must be dealt with in this committee as being extremely objectionable.

I want to get back to that particular component because the tourism criteria which you have required municipalities to adhere to, and the expansion of those tourism criteria in Mr Sorbara’s amendment, deal with the judicial nature of the proceedings in a significant way. Mr Sorbara’s amendment expands the criteria by saying that in addition to having criteria “for the maintenance or development of tourism,” they are “for economic development purposes or for any other purpose prescribed by the regulations made under this section.”

On the issue of the quasi-judicial decisions that councils are going to have to make on the tourism exemption and the possible opening up of review in the courts, Mr Sorbara’s motion expands that reality very significantly. That is a component of the bill that is not acceptable. In other words, if you are going to have your tourism criteria and if Mr Sorbara’s expanded mandate for these decisions is going to be adhered to, you are going to have to make the municipalities the final arbiters of this decision,



because you are looking at very significantly expanded access to the courts even on the basis of the decisions and the process internally at council and at council meetings as opposed to simply appealing the decisions that council has taken at the Ontario Municipal Board.

I particularly want to bring to the attention of the newspaper-reading Solicitor General in the back corner of the room some comments that had been made. He is not listening, because he did not lift his head when I mentioned his name, and he still has not lifted his head.

1700

**Mr Mills:** You have put him to sleep.

**Mr Chiarelli:** As usual, he is reading with his eyes closed. That is the extent of his education.

The quote from the standing committee on government agencies, page A-63 of January 22, 1991, indicates that Mr Kruger said the following:

"The state of the board is that we are making our best efforts. Our members are working very hard. Their productivity per member is increasing, but it is just the reality. Our hearings are getting longer and longer in numbers of days. What a lot of people do not realize is that anything that touches land use gets into socioeconomic questions, for instance, when Mr Farnan, the minister, announced he was going to have group homes rather than incarcerate people. Fine idea; nothing wrong with it." Are you listening, Mr Solicitor General? I am quoting something that is very significant. "I shuddered, because every group home hearing—you can imagine what it is like in a community. If it is 12 days of hearings, it is two days of evidence and 10 days of emotion. One of the members sitting here can tell you all about that up in Sault Ste Marie, where we have just been through that."

We are talking about an issue like Sunday shopping, which can be very emotional and very volatile. What is going to happen to the Ontario Municipal Board? We have here Mr Kruger, who is the chairman, talking about referring emotional socioeconomic issues to the Ontario Municipal Board, but what you get is two days of substance and 10 days of emotion. What does that do to the pocket-book of small business people?

Are you guys trading? Who is coming over here? I note, Mr Morrow, that you, Mr Cooper and Mr Kormos made a little venture into the Conservative and Liberal lounge yesterday. I think you were exploring new territory for possible future activities. We always have an open door policy in our party. If you look at Mr Ramsay, someone who came across from your party who has done great things in the Liberal Party, and at Mr Morrow, who has been seen to be quite critical of some of the initiatives of his own government, and at Mr Kormos, I am glad to see that you are exploring the fresh, clean air of the Liberal lounge beside the Legislature. I think they also prefer the refreshments that exist in our members' lounge as opposed to the NDP lounge.

In any case, I will get a little more serious here because we are dealing with a very serious issue. I think it is very important that we think about Mr Kruger's words. He is saying: "Our hearings are getting longer and longer in

numbers of days. What a lot of people do not realize is that anything that touches land use gets into socioeconomic questions, for instance, when Mr Farnan, the minister, announced he was going to have group homes rather than incarcerate people."

I think the key there is the socioeconomic issue that Mr Kruger is saying ought not to be before the Ontario Municipal Board. He is saying, "If it is 12 days of hearings, it is two days of evidence and 10 days of emotion."

We have had in this committee a very detailed investigation into the whole issue of alternative dispute resolution, and I want to refer to that. What we are talking about here is a government that is going backwards into the 1960s and the 1950s, that is basically saying, "In a socioeconomic issue which previously was not part of the quasi-judicial system, we are going to take virtually every bylaw that's passed by a municipality and throw it into the quasi-judicial forum."

What you are going to have is the people who support a common pause day across this province appealing cases to the Ontario Municipal Board. What you are going to have is businesses who want some semblance of openings taking various legal steps and actions in order to get what they feel are their rights.

The standing committee on administration of justice in June 1990 reported to the House on the whole issue of alternative dispute resolution. It indicated that there should be major initiatives taken by the government of the day, whichever one happened to be there. It indicated that there is a better way to do things. One of the better ways to do things that was recommended by all parties in the House who participated in this committee was that legislation that is created by this House should look at alternative dispute mechanisms, different ways to resolve problems. They were saying that in the 1990s and through the year 2000 we have to be more reasonable, we have to be more rational, we have to be more understanding, and we have to find better ways to build consensus.

About 12 months after this committee recommended to the province of Ontario that mediation, arbitration, new systems of fact-finding, etc, be incorporated in legislation, it happened in some legislation. In the automobile insurance legislation we have a system of alternative dispute resolution, a system of mediation and a system of arbitration that has been written into the legislation. The reason for that is that they want to get people out of the courts. We all know that on that particular issue it was costing the province \$700 million or \$800 million a year in legal fees, to say nothing of the costs to the taxpayer and the government and the province inside the court system.

1710

If you look at the system of alternative dispute resolution that was incorporated in legislation, it is working 10 times better than anyone ever anticipated. Even many people in the New Democratic Party government realize that the system of no-fault, putting the disputes into mediation and arbitration, makes a lot of sense. We know that the Treasurer, Mr Laughren, is a no-fault person, and we know therefore that he supports the legislation that would put



dispute resolution on the automobile insurance issue into mediation and arbitration.

We have all parties on this committee reporting to the Legislature in the alternative dispute resolution report of June 1990, saying that legislation which is created by our Legislature should create new ways of alternative dispute resolution to solve problems. So when we look at this Bill 115, and when we look at the amendments that are being recommended and suggested by the Solicitor General to provide more access to the courts and more access to the Ontario Municipal Board, you are going absolutely, totally against the thrust of thinking in the Ministry of the Attorney General, which has a group looking at alternative dispute resolution. You are going against the recommendations of this standing committee on the administration of justice and you are going against the recommendations of the best legal minds in the country and internationally. I refer you to the group of witnesses who came before our committee and recommended not appeals to the Ontario Municipal Board and not vigilante groups being created to take people to court; they recommended in the strongest, most rational, reasonable way that new legislation create alternative dispute resolution mechanisms.

I do want to indicate the people who recommended that in legislation of this type, such as Bill 115, you should be looking at alternative dispute resolution. I want to go through and indicate them to you because I think it is significant. I think it is significant for a number of reasons, not the least of which is that I cannot see any member on the government side in this room today who was in the Legislature at the time this committee was reported or at the time the justice committee was considering this issue, including the Solicitor General.

I am going to take a bit of time to tell you who came before this committee and said: "Do not send things to the Ontario Municipal Board for resolution. Do not make access to the courts, the adversary system, the rule of the day." Your clause-by-clause amendments are very significantly enhancing the adversarial nature of our system, and these people said you ought not to do it.

Dr Gary Austin is co-ordinator of the London Custody and Access Project and psychologist with the London Family Court Clinic. He teaches in the department of psychology at the University of Western Ontario, has published widely and was a member of the Attorney General's Advisory Committee on Family Mediation.

Robert A. Blair, QC, is chair, Canadian Bar Association-Ontario subcommittee on alternative dispute resolution; partner, Stockwood, Blair, Spies and Ashby of Toronto; and founder of the Private Court, a service providing experienced counsel as adjudicators in largely commercial disputes.

Again, at the risk of going on, as some of the people in the room would consider, *ad nauseam*, I want you to understand that this standing committee on administration of justice, which included Mr Kormos at the time, and I believe Mr Farnan, recommended unanimously that alternative dispute resolution mechanisms, as opposed to access to the courts, be incorporated in all new legislation. I am telling you the people whose advice we relied on for that, and am therefore telling you why this committee should consider

alternative dispute resolution mechanisms. If you are going to assess any tourism or other criteria, as Mr Sorbara is recommending, you should be looking at the alternative dispute resolution mechanisms these people are recommending.

Martin Campbell of the firm of Beard, Winter in Toronto was with the Ministry of Health and on the staff of the Macaulay report on government agencies, boards and commissions. Again, this was a report commissioned by the government of Ontario which recommended very strongly that alternative dispute resolution mechanisms be devised in legislation and that you not provide access to the courts as the means of solving problems—that there are better, friendlier, more agreeable ways of doing it.

Michael Cochrane is counsel with the policy development division, Ministry of the Attorney General, and was also the chairman of the Attorney General's Advisory Committee on Family Mediation.

Christiane Coulombe is the lawyer in charge of the Montreal office of the Service de médiation aux petites créances, the publicly funded voluntary mediation service attached to Quebec's small claims courts.

Carole Curtis is a family law practitioner with the family law section of the Canadian Bar Association.

Paul Emond is a professor at Osgoode Hall Law School. He has written very extensively and recently edited *Commercial Dispute Resolution* (Canada Law Book, 1989). He is an expert in commercial, environmental, resource development, public and native dispute resolution, and is editor of *Canadian Environmental Mediation Newsletter*, published by Conflict Management Resources, a joint enterprise of York University's environmental studies faculty and Osgoode Hall Law School.

Joan Fair is director of the Ontario region of the Canadian Dispute Resolution Corp.

Mary Lou Fassell is a member of the steering committee of the Family Law Reform Coalition.

Gordon Henderson, OC, QC—I am skipping some of them; I am not going over everything—is a partner at Gowl-ling, Strathy and Henderson in Ottawa. Among his many other affiliations, he is chairman of the board of governors, Foundation of the Arbitrators' Institute of Canada, and a member of the Canadian Institute for Conflict Resolution.

I see the counsel for the Solicitor General and I see the Solicitor General here, and I want to know, in drafting this legislation, did you consider alternative dispute resolution means of looking at the tourism criteria so you are not forcing people into an adversarial system across this province? Do you think it is responsible to force people into an adversarial system, to force municipalities looking at these criteria and the criteria of Mr Sorbara's amendment into a quasi-judicial process that will open up disputes in the courts? I want to go on and continue to indicate the number of people who told this very justice committee that you ought not to be doing that in creating new legislation.

Howard Goldblatt is a partner in the labour law firm of Sack, Goldblatt and Mitchell. He has reviewed the use of labour arbitration for the federal government, is an experienced practitioner and has written extensively on dispute resolution in the labour context.



1720

Are you, as a government, trying to tell me that you did not have the resources of these people on contract as advisers to say: "We've got a problem on the issue of Sunday shopping. We have people who are at odds with one another, people who want a common pause day. We want to establish criteria. Can you draft something that makes sense for alternative dispute resolution?" Or do you come out of a caucus and issue an ad hoc press release saying, "Aha, we want to appease some people so we will give them access to the courts and the Ontario Municipal Board," an irresponsible thing to do based on the advice of all these legal experts who came to this committee 15 or 18 months ago to say that what you are doing is exactly what you should not be doing.

Professor Howard Irving teaches at the faculty of social work, University of Toronto. He is an expert in the field of family mediation in general and court-linked conciliation in particular. He has been director of the Centre for the Family Dispute Resolution since 1981 and was research director of the first court conciliation project in Ontario.

We look at William R. McMurtry, QC, counsel and senior partner, Blaney, McMurtry, Stapells, and chair of the Advocates' Society committee on alternative dispute resolution.

Jack R. Miller, a partner in the law firm of Fasken Martineau Walker, is probably the best expert in Canada and one of the best experts in North America. He has given seminars on this very issue at Harvard University. He is saying: "This is not the way to go. Solve disputes in a reasonable way; create an alternative dispute resolution forum."

**Mr Winner:** You had five years to introduce ADR. Why are you holding up our bill?

**Mr Chiarelli:** I am saying this bill should be amended to include ADR, and you should take it out of the courts. You guys do not want me to debate the issue of the amendments of the Solicitor General which he announced on September 27. You just want to run this thing through because you have a caucus, a cabinet and a political expediency to deal with and you are not dealing with the legislation. This legislation should be deep-sixed. It should be more than stalled: It should be deep-sixed until you come to your senses.

**Mr Morrow:** Stop stalling and let's move on then.

**Mr Chiarelli:** If I can go on with the very experienced people who said that Bill 115, particularly the amendments of the Solicitor General and the implication of Mr Sorbara's amendments in terms of creating a quasi-judicial body and decision-making process—these people say you ought not to be doing it.

Roberta Jamieson, Ontario's Ombudsman, is basically saying, "Go the ADR route on virtually all legislation that is introduced." Her brief is available. Go over to the standing committee on administration of justice. Lisa Freedman, the clerk, can pull all these briefs out and put them on the table for this committee. As a matter of fact, as a member of this committee, I am going to make a request of the clerk that she make available the transcripts for committee members on alternative dispute resolution which were presented by Robert Blair; Dr Gary Austin; Michael Cochrane

from the Attorney General's office; Gordon Henderson, former president of the Canadian Bar Association; Professor Howard Irving, and Roberta Jamieson.

**Mr Winninger:** Don't forget Goldblatt.

**Mr Chiarelli:** Certainly, Howard Goldblatt. You can have him if you want him.

I would really recommend to you probably the best submission I have ever heard, as a practising lawyer who practised law for 18 years before I was elected, probably the most reasoned approach to legal disputes that I have ever heard in my adult life, education or work experience—and he would not support Bill 115 and the amendments that are recommended by the Solicitor General—Dean Peachey.

Norman Sherman, the Arbitrators' Institute of Canada. Oh, and another one, Ernest Tannis. He is an Ottawa lawyer, co-founder of the Dispute Resolution Centre, Ottawa, and executive director of the Canadian Institute for Conflict Resolution.

I would really triple underline for members of this committee—if Ms Freedman can provide copies to them—the brief and the answers to questions of Bonita J. Thompson, QC, partner at Singleton, Urquhart, Macdonald in Vancouver, chair of the Canadian Bar Association's task force on alternative dispute resolution, and founding and past executive director of the British Columbia International Commercial Arbitration Centre, one of only two in Canada, the other being in Quebec. The centre's services are paid for by the users and include arbitration and mediation of commercial disputes between Canadian parties and arbitration of international commercial disputes. It also deals with motor vehicle insurance matters. She drafted the centre's rules of procedure and co-edited certain models of alternative dispute resolution processes.

There are a number of others who came before the justice committee in the spring of 1990 and I believe the fall of 1989, and really in a very non-partisan sense told this Legislature where it was going wrong. I might say that the justice committee of the time dealt with this issue in a totally non-partisan way. I want to say it was the first issue under the rules that were established in 1988, I believe, which permitted so many hours on issues that are initiated from the committee. I forget the standing order.

**Clerk of the Committee:** Standing order 106.

**Mr Chiarelli:** Under standing order 106, that particular provision. We had a subcommittee meeting of the justice committee at that time and we agreed, in a very non-partisan way, that this whole issue of alternative dispute resolution was way too much on the back burner. We were dealing with issues and legislation in a way that was the 1950s and the 1960s and we wanted to get a handle on it and look at it in a very forward-looking way. The clerk of the committee and the research people did an excellent job.

Those people whose names I mentioned are experts second to none in the world and they basically said: "When you draft legislation, don't provide access to the courts. It's the wrong way to go. You could do it a better way and there is a better way."

**The Chair:** Pardon me, Mr Chiarelli. These transcripts are available to all committee members right now



in the clerk's office. Because of the public demand, she knows exactly where they are and they are available for anybody that wants them.

**Mr Chiarelli:** Thank you. If I can refer to Mr Sorbara's amendment again, I will be wrapping up my comments in a couple of minutes, because I believe my colleague Mr Poirier is next on the speakers' list and does want to say some things.

If I can just get my hands on that amendment which I keep misplacing, it says: "Despite section 2, the council of a municipality may by bylaw permit retail business establishments in the municipality to be open on holidays for the maintenance or development of tourism, for economic development purposes or for any other purpose prescribed by the regulations made under this section."

1730

The draft regulations I have commented on create a quasi-judicial decision on municipal councils. The amendments proposed on September 27 by the Solicitor General basically create additional quasi-judicial procedures by requiring an amendment for some people but not others. I might add that appeals to the Ontario Municipal Board and more access to the courts for people who want to try to prosecute transgressions, and now Mr Sorbara's amendment, would further expand the quasi-judicial component of municipal decision-making. I say to this committee that it is a mistake. It goes against the best legal advice this committee could obtain, and I might add, almost free of charge.

I say "free of charge" because these people came for expenses. Bonita Thompson from British Columbia feels so strongly about the Bill 115 type of legislation, the Solicitor General's type of amendments, including Mr Sorbara's type of amendments—they came here because it is almost a religion to them that we have to do them in a new, improved way.

We have the recommendation of this committee from June 1990 which says to the Legislature, "Don't legislate like Bill 115." You are doing it at your risk and you are doing it in a way that will result in harm and damage to the people of Ontario, to the institutions we have, the boards, tribunals, courts and municipal councils across this province.

If you think I am filibustering and just trying to fill in time, I wish you would consider the substance of some of the things I am pointing out, because it is not me saying them. I am repeating the comments and advice of a lot of very experienced people who took time to come to this Legislature and tell us a better way to deal with issues.

I am going to ask Mr Poirier to continue because I believe he is next on the speakers' list, but I do intend to get back to some of these issues the next time we meet.

**The Chair:** Thank you, Mr Chiarelli. Mr Poirier, continuing on the Liberal motion.

**Mr Poirier:** The Liberal motion, yes. Merci. I am quite impressed with what my colleague had to say. I know he could have gone on for many more hours, if not days, pertaining to this point. Actually, he was very short about this.

Interjections.

**Mr Chiarelli:** You are not a monopoly at the NDP. As a matter of fact, your monopolistic morality is quickly evaporating.

**Mr Poirier:** Now that I have the floor again, I know some of my colleagues will state, "You are adding to the time where this could be passed and should be passed," and whatever. In part, that may be true, but we are doing this today when we were supposed to have done it the week of September 16, when I drove 515 kilometres from my riding to participate in clause-by-clause only to be told by my friends of the NDP that they wanted to postpone this to a later date without any further reasons given.

As we are now doing this at the end of October, I do not feel complexed whatsoever by the fact that I will take maybe half an hour to explain to the people of my riding my observations at the end of the work, just as we are doing clause by clause on Bill 115.

I wish the Solicitor General were here so that he could listen directly to what I would like to say. I will tell my good friends from the NDP caucus we may have a difference of opinion on this, but I respect them no less, or whoever came forward to make a presentation throughout the summer in Toronto or elsewhere in the province. When I look at that Liberal motion, I sit here with a very strange feeling of wanting to try to bring it closer to what we had before. Why would that be? Because of what I have heard through the summer.

My good friends from the government caucus, some of whom are sighing, I presume in anticipation of listening to what I have to say, will have learned through the summer—if I can judge from the Solicitor General's request on September 16 to postpone discussion on this because they wanted to look at it further—that the golden rule of government and politics is that you can never please everybody all of the time.

I guess what they could have found out, even to our surprise as Liberals, was how much society's perspective has changed with particular reference to this dossier on openings on Sundays and holidays. After discussion of the subject in private with many lobby groups and in front of the committee over the summer and even since last spring, it was most interesting to see how rapidly society in Ontario has changed on a dossier that has been with it for a very long time. The fine research people of the Legislative Assembly, especially Ms Swift, has provided us with a great historic list of this dossier from the 19th century onwards.

With the bill as we have it, I respectfully put forward that we are going to be discussing this dossier for years to come because of the modification the NDP government wants to bring, courtesy of Bill 115. I say this respectfully. I do not say this in spite of or whatever. I am just saying that because of the nature of this bill, it is going to cause us a lot of problems.

Some very patient, very diligent people who have been with us throughout the summer wanted a very strong stoppage of the practice of Sunday shopping and/or Sunday working. These people have been listening to this and have made some presentations. I think of the Lord's Day Alliance and of our good friends the United Food and Commercial Workers International Union, who brought some very



interesting and very good points forward, especially where they were noting and describing cases where some of the bosses were not very straightforward with some of the employees pertaining to the employees' obvious right to refuse work on Sunday and the possible consequences.

Throughout the summer, I have mentioned very clearly that I strongly supported the right of workers to be able not to work on Sunday, but I will expand that in a little while.

I spent the summer listening to people who wanted to shop and who did not want to shop, people who did not want to work and people who wanted to work. I was impressed by the long list—I did not expect that initially—of people who wanted to work because they wanted to or felt they had to. I will remember the store owners, small, medium, and even large-sized, who presented long lists and said they had lists of 200 or 300 people who wanted to work on Sundays. I remember the people who said that since stores had been opened on Sundays, shopping was their way of spending time with their family, a new-found way. This came as a surprise to them and others, I guess, to spend some time together with the family going shopping on Sunday.

Others, and I respect that very much, absolutely did not want to work on Sunday or shop on Sunday, and I have no problems with that. People wanted protection to be able to refuse to work on Sunday and people deserve that protection. But, as I said earlier, I will expand on that particular point.

With the immense change of attitudes on this dossier, generally speaking, in the last year, and the way it was described to us by a lot of individuals and groups, many people wanted the freedom of choice. I strongly supported the Liberal law that closed everything on Sundays and holidays but allowed a local option to open, because I realized how different Ontario was from region to region. Your region might be close to the border or further inland, a large municipal area, a very touristic area, or a small hamlet in mid-Ontario very far away from huge economic pressure. I thought the Liberal bill represented the difference very well, the "vive la différence" attitude we saw across Ontario.

1740

With what has happened to the socioeconomic context of Ontario in the last year, and from a global feeling of all the testimonies we heard in the last few months, especially on our travels throughout Ontario, one thing that comes forward is the freedom of choice. I have come to the conclusion that even though we cannot please all the people all the time—and now I know for sure that my NDP friends in government are cognizant of that—I think the best way is no law at all, the freedom of choice, as long as the workers have a protection choice not to work on Sunday, if that is their religious day of the week, or for others of other faiths to choose their day of faith and have the freedom to say no to having to work on their day of religion.

The other anomaly that I have seen throughout the summer is the government trying to impose a definition as to what is common. I think it is extremely important that when you look at the definition of "common," it means at least, if not to everybody—the totality of the population—the majority. The statistics I have heard through the summer indicate that at the most we are talking about 12% of the workers of

Ontario who work in retail sales who could be affected by Sunday work. I have come to ask myself the question, what is common about that definition of "common"?

Also, the definition of "tourism": It is one of the widest definitions of the word "tourism" I have ever seen in my life, being at the source of the creation of the Prescott and Russell Tourism Association. Tourism is a dossier I know very well, having worked in that specific sector in the last 20 years on and off, directly and indirectly. When I look at what is proposed in the regulations for the definition of "tourism," I think of a Swiss cheese because this law will have as many holes as a Swiss cheese. There are some people, I found out, in society whose national sport is to find the loopholes in laws. They will find so many loopholes in this regulation as to the definition of "tourism" that my good friends in the government caucus will be playing with this law and this regulation right up to and including the next provincial election campaign three or four years hence.

When I heard the Solicitor General say he would allow any so-called interested party to come forward with objections and bring them to the OMB—I have heard of the expression "vigilante groups." Since they are going to be able to qualify themselves as an interest group and be able to do that across the province for any other area—they just have to plead they are an interest group, and there it is, ladies and gentlemen—they are going to become the Hezbollah of the Sunday shopping issue.

If I were one of the lawyers really objecting to the Liberal law on car insurance, and I saw that the NDP maintained the refusal to have victims sue for damages and whatever, I would be smiling all the way to the bank, I guess, because they are going to be making a heck of a lot of money going to and from the OMB to defend, oppose, protect or attack particular points of Bill 115. By the time the next provincial election comes along the OMB is going to be completely bogged down with an overload of objections from these so-called interested parties. This should be a most interesting thing to see.

I think this whole law, with all due respect to the very fine person who is the Solicitor General—and I have told that to my friends in the NDP in private and I tell him publicly—will be an albatross around your neck for many years to come. You are going to be dealing with this issue and we are going to be dealing with this issue, because you will not have dealt with it in the years to come and in the next provincial election for sure. Whichever party is going to form the government after you will have to deal with this issue, because it will have a lot of fence mending to do. If the attitudes in Ontario change as rapidly as they have in the past year, we definitely have not seen the end of this yet, believe me.

We heard some very fine representations throughout the summer, throughout our travels, and I want to say thank you to them. I want to say that I respect them very much, from whichever side of the story they wanted to look to this issue. It is not because we may have a disagreement as to what should be done with this issue or with Bill 115 that I will say that I do not respect them. Of course, for these fine people to take the time to prepare a



presentation and to take some time off and come and make this presentation in front of a committee like this is quite commendable, and I want to say a very sincere thank you to them.

There are three particular points I have retained specifically that I would like to address right now—that does not mean the other points I have heard about and respected throughout the summer are not important whatsoever; I am sure they will understand—that prove to me that the current law is extremely out of whack and extremely unfair, if only for these three groups. Of course, I believe that this law is unfair to a lot of other groups, but I will take a bit of time to talk about these three points.

First, I remember a fine group of people who came to us in Peterborough. They were planning to open in the future a multistore complex in an area of town that has been traditionally a tourist area. Of course, their project was not completed; it was still at the planning stage. They exposed to us the dilemma they had. If they wanted to attract businesses that would come forward and sign a long-term lease with them to be a tenant of that complex, these tenants would have wanted to know if they had a chance to open on Sundays. What they wanted to do, they felt, was a tourism-oriented type of business, whatever it was.

Of course, that firm that was developing that piece of property wanted to come forward to the municipal council in Peterborough and ask for an opportunity to see if its future project, still at the planning stage, would merit the designation “touristic.”

Of course, the law as it stands right now is very silent on the possibility of those who want a future touristic designation for their future tourism project. They have no recourse to be able to find out, to be able to know, to let their potential tenants know that, “Yes, this has been a designated tourist area and these tourist-oriented businesses that we want to do in this specific area will be able to open on a Sunday.”

How in the heck can we expect a potential tenant to come forward, sign a lease for a complex that remains to be built, to be opened, in an area to be or not to be designated touristic depending on the whims or whatever, and depending on how all the different criteria for the so-called tourism regulation would be put forward by the municipality and accepted by the government, and contested by the so-called interested groups—Hezbollah of Sunday shopping? How can you sell this and how can you buy it?

We made a lot of representation to the Solicitor General to bring this particular point forward to the caucus and to cabinet. By looking at the proposed government amendments, it is pretty obvious that the government has no intention to respect and understand and have a feeling for those who are trying to create jobs in Ontario, for those who have the initiative to create better socioeconomic conditions in Ontario, for those who dare invest and have a confidence in the economic context of Ontario.

We are telling those people, “I guess you’ll have to take a chance and try and tell your potential clients”—and we do not need a doctorate study to find out how difficult it is to get some tenants in a business right now in Ontario. I guess we do not have the courage to tell those people,

“Yes, your project in that specific area will definitely be designated touristic,” because we do not care enough about them and they are still on the outside.

1750

To this day, since the government has refused to amend the law, to take into consideration the future tourism-oriented businesses, I do not know what that fine group of presenters is going to do in Peterborough, how they will be able to interest and convince some potential tenants to sign a lease for a tourism-vocation business where they might not ever get the chance to open on a Sunday. I find that extremely inconsiderate of the government, to just blow away fine tourism-oriented developments like that in Ontario.

Is the government telling the tourism sector of Ontario that there is enough current development that we do not have to deal with or give an answer to those who want to develop, who have plans for future tourism development in Ontario? That seems to be the message the government wants to give those people who are interested, who still have faith in the tourism sector in Ontario.

I am appalled and I regret that the Solicitor General—I assume he tried to push this in caucus and/or cabinet. I will give him the benefit of the doubt, but I can only state that I regret that the NDP government did not see fit, as a way of respecting those who want to develop the tourism sector of Ontario in the future—especially since in Bill 17 you have and you will have some regulations to have a tourism exemption—was unable to say, “We salute you ladies and gentlemen who have plans to develop the tourism sector in Ontario,” but “You will have to wait till your project is actually officially open with a ribbon-cutting and whatever, then apply and we will see what we can do then.” To me, it is completely illogical.

The second point of three that I wanted to concentrate upon is the whole status of the Ontario discount drugstores, and I think there are something like 35 across Ontario, those larger stores, those over 7,500 square feet, those stores that employ 3,000 people in Ontario. I was talking to some of these owners recently. I was talking recently to some of the MPPs who have some of these large discount drugstores in their ridings.

I still cannot believe that as soon as Bill 115 comes forward, 3,000 Ontarians risk losing their jobs because of this. It is beyond me, from a government that comes in at a time when industrial jobs are being lost in record quantities across Ontario, a government that in its own budget statement said it cared about job creation, that it was going to bust its buns trying to create even more jobs in a very difficult context, that it will be kissing goodbye 3,000 Ontario jobs just by pushing its magic wand on Bill 115.

I cannot believe that this government, this New Democratic Party that says, “We’re going to be a lot more sensitive,” that it would listen a lot more, that it would be a gentler and kinder government, is about to kiss off 3,000 jobs, 6% of the people working in drugstores, but that is still 3,000 people. And it is no bluff, because they have offered to open their books to any accountant the government would choose to prove this is the case.

One of these persons was talking to me this very morning, and I said, “How much of a discount place are

these places, by the way?" Again, the NDP government has said it was very sensitive to the poor. They wanted to try and eliminate poverty and the food banks and whatever. I was hearing some people say that they cannot afford to go shop anywhere else. I asked one of these people who is cognizant what the difference in price is that you can see there—and I do not have any conflict of interest, because I do not have any of these large discount drugstores in my riding. I am in the far east. In Prescott and Russell there is none. I have heard the lobby and whatever, but I have no personal interest.

They were stating, for example, for the pads diabetics have to use, the regular price in the regular type of drugstores is \$4.99 per package and in those discount drugstores it is 99 cents for the same package—\$4.99 versus 99 cents.

It says here, "Far more than 50% of the prescriptions filled on Sunday are emergency or new prescriptions, and 75% to 80% of all goods sold in these stores are traditional drugstore items." What will my NDP friends tell their constituents or other Ontarians who live below the poverty line who have told us they can only afford to shop in these large discount drugstores when these stores close down because of the fine level of understanding from this NDP government? What the hell are they going to tell them?

When these clients who live below the poverty line, who have a hard time putting ends together, have all of a sudden to start to pay \$4.99 again for the same medical pads that diabetics need after having paid 99 cents for the same package, what will they answer these clients? Is that the gentler, kinder, more attentive, more respectful party that said it was going to listen more to the poor people? Will you eliminate food banks by this? No, you will not.

What are you going to tell the 3,000 Ontarians who might and will probably lose their jobs because these large discount stores will be forced to close?

Apparently 91% of the goods in these stores are sold between 5% and 35% cheaper than traditional drugstore chains and the dispensing fees are \$2 to \$3 cheaper than those of the competition. That is rather interesting.

I have four questions from the people who work and the people who own, the Ontarians who own these 35 discount drugstores. The first question: Why should the public be denied access to discount drugstores whose average prices for goods and services are 20% to 40% less than those of conventional drugstores?

The second question: Why should students and others needing this income be denied the opportunity to do the same work employees of conventional drugstores smaller than 7,500 square feet are allowed?

The third question: Why should multinational corporate drugstores of 7,500 square feet be allowed to operate on Sunday when larger, independently owned, Ontario-owned drugstores selling the same products are restricted from operation?

The fourth and final question: Why is the common pause day being applied to only 3% of drugstores in Ontario?

That fourth question echoes my concern as to the definition of "common." When this law applies to something common, the size of drugstores, it represents 3% of drugstores in Ontario. This whole fallacy of size does not make sense. Who am I to state that a multinational corporate store under 7,500 square feet should be allowed to open whereas an independent, Ontario-owned store over 7,500 square feet has to close? It does not make sense. I have been trying my very best to understand the logic in this and I see none. Hence, I think you are just going to hang yourself with this ridiculous situation.

The owners and the employees are going to come in tomorrow and try one last time to knock some sense into you pertaining to this situation.

I realize it is 6 o'clock. I would like to be able to continue next week with my third and last point. I move the adjournment of the debate.

**The Chair:** Mr Poirier has moved the adjournment of the debate. Seeing it is 6 o'clock, this committee will stand adjourned until Monday, November 4, at 3:30.

The committee adjourned at 1759.



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Tuesday 29 October 1991

**Retail Business Establishments Statute Law Amendment Act, 1991, Bill 115 / Loi de 1991 modifiant des lois en ce qui concerne les établissements de commerce de détail, projet de loi 115 . . . . . J-1545**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Carter, Jenny (Peterborough NDP)  
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Mills, Gordon (Durham East NDP)  
Poirier, Jean (Prescott and Russell L)  
Sorbara, Gregory S. (York Centre L)  
Winninger, David (London South NDP)

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 4 November 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 4 novembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail



Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 4 November 1991

The committee met at 1537 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**Mr Poirier:** Minister, last Tuesday, when I started talking about this particular Liberal motion, I mentioned that there were three different points among many that we heard throughout the summer. Unfortunately you were not able to hear and maybe with your bill for the House, you may have to leave soon. That is understandable, sir.

I wanted to tell you that of the first two points I discussed last Tuesday, one was for future businesses. For example, a group in Peterborough were seeking some amendments so that those planning some future businesses based on tourism and/or a tourism sector could come forward because they need to know from their potential clients if they would be open and what the type of schedule would be. That, of course, will influence potential clients and leasers of those businesses as to whether they are interested in that future project; whether Sunday business is open to them as per your bill. From what I can see, that concern has not been addressed and I find it very sad that a lot of people across Ontario who are very involved, and want to get jobs and businesses going in Ontario, will not be considered for a Sunday possibility in the tourism sector because they do not actually have the business now. You will have to deal with that at a future date, I am sure.

The second point I talked about, as you are quite aware from the press release last week, concerns the discount drug store associations and the 3,000 people who by all accounts will probably lose their jobs if they are not able to open on a Sunday.

The third point is something I have talked to you about very briefly because I knew I was going to elaborate on it today. Mike Anderman made a presentation in August when we were in Toronto, and his seven-page presentation really caught my attention. It started off by saying, "Rights currently available to both Jewish and Christian store owners under the Ontario Human Rights Code will effectively be taken away from Jews"—and others who do not respect Sunday as their day of worship—"under Bill 115."

Having talked about rights, minorities and specialty groups with some NDP friends for a long time, I was always under the impression that even though they may be from a political party other than mine, this was something extremely important to them. They would not want to be part of a bill that would openly discriminate, especially when you are looking at the Ontario Human Rights Code, from one group to another, from the majority to the minority. This really started me asking questions. With the type of Ontario we have right now, that we are about to have and that is very much under rapid change and even more rapidly escalating change, still for the majority in Ontario, Sunday is the day of worship and the day of rest and I have no problems with that.

I would like to have a day of rest myself once in a while, but that is not necessarily the case with MPPs who work seven days a week and cannot plead under the Ontario Human Rights Code to have a day off or 38 or 36 consecutive hours. But for others who may be Jewish, Seventh-Day Adventists—and I have good friends who are from that persuasion—Muslims, their day not being a Sunday, it is rather interesting considering what your own party is doing with everything else right now in government. In all your other bills you seem to be taking that into consideration; but there is somebody somewhere in government, whether in your office or the Premier's office—I do not think it is you personally, I am sure of that. I am sure you are not very comfortable with the fact that Jews and other non-Sunday-worshipping Christians or non-Christians do not have the same type of protection.

I have said publicly before: that the part of Bill 115 I like is to make sure workers who do not want to work on Sunday are protected. There are two particular groups I want to reassure at this moment: those people from the United Food and Commercial Workers union and people from the Lord's Day association. I really appreciated what they had to say to us throughout the different presentations this summer. I listened very attentively to what they had to say. We have with us here a good friend of ours who has been a constant companion, Les Kingdon.

I wanted to tell Les and others that I appreciated very much their input and efforts and I respect that belief very much because deep down it would be nice if we could all have the same common day of pause and it would be very nice if we had this time off collectively as a majority. I would prefer to see all of Ontario take a common pause day to be able to do the things we dream about, especially ourselves, working 110 hours a week. That, I guess, would be my first choice ideally, to have a common pause day on a Sunday.

I have dreamt for that, but obviously when you come to government you realize you do not only represent what you personally dream about, you also have to take into

account the incredible changes happening in Ontario that you sometimes do not agree with or do not support, or whatever.

This particular one I have a bit of a hard time with because in his presentation he was explaining very carefully that it is a discriminatory result and not a discriminatory intent. Obviously, the ministry involved with Bill 115, the Solicitor General, and individuals, did not have an intent whatsoever to be discriminatory with Bill 115. Obviously not, and I would never have accused them of that. But there is a discriminatory result with Bill 115 that is rather interesting to say the least. He said in that presentation, "But discrimination against minorities is just what Bill 115 will accomplish." He goes on to say, "It imposes economic penalties on Jews and others wishing to observe the Saturday Sabbath or other non-Sunday day and who also wish to work, shop and open a business on a Sunday."

With the changes we have seen in attitudes in the last year in a lot of people who have had a second look at how they personally feel or how they would like to see Ontario feel about this particular point, they have a point. I am not comfortable with supporting a law that imposes those types of penalties or discrimination, even though they are not intended, on people who do not have Sunday as a day of worship or a day of rest. They were saying Bill 115 is an absolute right to Christians but not to Jews and others, and that Jews and others will be stuck with the weaker rights available under the Human Rights Code as opposed to the protection given to Christians who do not want to work on Sundays under Bill 115. That is rather interesting.

If I were a Jewish store owner, I would not open on a Saturday because of my religion and I would not be able to open on Sunday because of Bill 115. Therefore, I would not be able to open for part of the weekend like others, and Christians are able to be open on a Saturday. A Jewish store owner must either sacrifice his religious principles or his employment and I find that rather interesting.

Obviously, Sunday closing of retail businesses, except in tourist areas as was mentioned, limits the range of goods that Saturday Sabbath observers can buy on the weekend, and limits the job opportunities for Saturday Sabbath observers. I would like to be privy to a meeting between the Solicitor General or any member of the NDP government and a group of Jewish store owners, Jewish employees, Jewish supporters, Jewish constituents, Muslims, Seventh-Day Adventists or any other religion that does not have Sunday as its day of worship. What will they be able to explain? Well, the majority rules.

Tradition in Ontario is that Sunday is the common pause day, the common day of religious observance for the majority in Ontario. Obviously, Ontario was more of a Christian province in the past, but this is changing rather rapidly and the consideration this particular government and party has said it would have for minorities, specialty groups, other religions and whatever, I do not think is coming through in Bill 115.

It is very disturbing that Bill 115 is going to impose on Jewish-owned stores a mandatory closing on these Christian holidays. I think the attitude of the vast majority of people in Ontario today is: "I can practise my religion and you have yours. My day may be Sunday, yours may not be Sunday.

It may be Saturday, Friday or whatever day it may be." I think more of a change in attitude is present today than Bill 115 will respect.

One of the points Mike was making was that a higher standard of religious consistency and sincerity is placed on Jews. For Jews under the Ontario Human Rights Code to opt for Saturday Sabbath observance, they must be consistent with sincerely held religious beliefs. This is a higher standard of religious consistency and genuineness than will be required of Christians who do not want to work on Sunday.

It is rather interesting that we have this religious differentiation among Ontario citizens today. I am not Jewish, I am not Seventh-Day Adventist, I am not Muslim, but still I come from a minority, albeit linguistic this time, and when I look at Bill 115 and what it is going to do, it is rather interesting that the government would want to pass this and not worry about the consequences and how they will have to explain it to people of other faiths who have days other than Sundays as their day of worship.

The tradition of Sunday as a day of rest was forced on minorities and those who reject religion by government law. That is quite true. In days past the majority's views held a lot more weight than we see today. It says here: "The NDP's choice of Sunday as a common pause day continues, by another name, the religious discrimination of the past against Jews and other minorities. As such it ignores and diminishes the rights and status of those who do not observe Sunday as part of their tradition."

I cannot fault that; he is quite correct. That is very disturbing when you consider the trend to Ontario's multicultural and multilingual attitude about its own society today and the way it is rapidly changing. Those who have not yet adopted that philosophy will soon see that a majority of the people of Ontario will see it that way.

I just wanted to bring that last point forward. Having spent all that time touring Ontario a day at a time or being in Toronto listening to other groups and individuals—

1550

**Mr Mills:** A wonderful summer.

**Mr Poirier:** A wonderful summer, but obviously a summer with a lot of frustration for a lot of the groups that were coming forward for the third time with their third brief to three different governments in a very short time to talk about what they feel they would like or not like on Sundays.

Obviously my friends of the NDP, now that they are in government, realize that they cannot please everybody all of the time and have an all-inclusive bill on whatever topic they want to choose where everybody is going to come forward and say, "Congratulations." It does not work that way.

I like to judge politicians and I like to judge bills as to how history books will look at all this, say, five, 10 or 20 years down the road. With the changes that are now happening and will be happening in Ontario society, when you extrapolate the rate at which change is happening and how society wants to organize its life, the way it wants to do it without government intervention and, with all due respect to those groups who want Sunday and have Sunday as their day of worship and day of rest—I have no problems with that—I think the overall history will demonstrate that



the best solution, even though it is not perfect and even though in itself it will not resolve all the individual wishes and beliefs, whether religious or others, will be to let society decide for itself, for its own socioeconomic reasons.

But with one bill to protect all workers who want to get their weekly pause for their religious beliefs, no matter when that is—society is changing too rapidly and too dramatically for the type of imposition Bill 115 is creating. As much as it would be nice to have a common pause day, it is thoroughly unfeasible because it discriminates too much against people's wishes and their religious beliefs to be able to really call it common in the way I define the word "common." It can only be common to a smaller and smaller group of people all the time, and as much as people would want or not want to work on Sundays or their other religious day, I think, as I said earlier, the best solution is to let society decide. I saw too many people who wanted to work. I also saw a lot of people who did not want to work on Sunday, and Bill 115 would have done a lot better to just address the protection of workers—all workers—not only for their Sunday refusal but for their religious day observance refusal.

I appreciate my government friends giving us the time to put that on the record, because I will want to use those words in the not-too-distant future. I want to tell my friends in the NDP government that for the next couple of years, until at least the next provincial election, you and we will have to deal with the inadequacies of Bill 115—and I say this with respect, and I know they know that—because it does not correct what you have perceived as being the shortcomings of the Liberal bill. I must admit that personally I have gone even beyond that. Let the people themselves decide what they want to do, whether they want to shop or work or recreate themselves on a Sunday or any other day. Who the hell am I to tell them what to do?

**Mr Carr:** I will be very brief. I will be supporting this Liberal motion 3, I believe it is, if memory serves me correctly, for two reasons.

First, I think back to the circumstances the government may not have thought about when it introduced this piece of legislation, the new developments that may be coming in and may be before municipal council. I guess there were two groups that appeared before us this summer that talked about that, one from a developer down in the Niagara region and another chap who appeared before us in Belleville, I believe, with a very detailed presentation of how they were going to expand and put up a wonderful development in the Belleville area.

I will be voting to support this motion because I believe that when the original bill was put forward, there were some areas that may not have been thought about for new developers coming in. I think, if we are going to leave it to the municipality, which is basically what this piece of legislation does, we should give it the option to decide whether new developments will fall into those criteria. To give an area a tourist exemption and then have to go back for a new development I think would be a time-consuming bureaucratic nightmare, so I will be supporting this particular motion.

**Mr Sorbara:** Just a point of clarification: I am glad my friend Mr Carr is supporting the amendment, but I think we were talking about two different amendments. The one you were talking about had to do with carrying on business or proposing to carry on business.

**Mr Carr:** I will be supporting that one as well.

**Mr Sorbara:** That is good. I just wanted clarification on it.

**Mr Carr:** It is number 3, right?

**Mr Sorbara:** We are on number 3. I suspect the government members are going to remain silent on this motion. I would have preferred that they were able to support this, even though it does not go along in every single way with the discipline and policies of their party. This would have made Bill 115 a workable piece of legislation in communities throughout Ontario. I suspect, because I have heard nothing else, that the government members are going to vote against it.

**Mr Morrow:** On a point of clarification, Mr Chair: I just want to clarify that—

**The Chair:** There is no point of clarification. Mr Sorbara.

**Mr Sorbara:** Of course, I tell my friend Mr Morrow, I did speak to this, and there is no rule to prevent someone from speaking a number of times on any particular amendment.

**Interjection:** Gord spoke to this.

**Mr Sorbara:** I am sorry, Gord spoke to this. I missed that speech. I regret that, because he is one of the best speakers in the Legislature. He is wrong in what he said, but he is a very good speaker.

I propose that the government reconsider, that the government members think about what benefits they could bring to communities all around the province by supporting this. I want to tell you, sir, I am going to be supporting it and I urge all members of this committee to do the same.

The committee divided on Mr Sorbara's motion, which was negated on the following vote:

**Ayes—4**

Carr, Harnick, Poirier, Sorbara.

**Nays—5**

Carter, Mathysen, Mills, Morrow, Winniger.

**Mr Sorbara:** The solidarity among the government members is a little discouraging, particularly as your Premier talks more about free votes and greater responsibilities, but, oh well, I guess that is for the hustings and not for the real world of formulating public policy. Is it my turn again?

**The Chair:** First of all, the motions on pages 5, 19 and 24 will fall because of this one, because they are all tied in.

**Mr Sorbara:** If you will just bear with me for a moment. Who has a pen? You brought down a lot with that one, did you not?

1600

**Mr Morrow:** Mr Chair, can you clarify that please?

**The Chair:** They are all tied in with this same amendment.

**Mr Morrow:** So they are all being debated now, or have been debated now?

**The Chair:** They will not be. Take them out of your book.

**Mr Morrow:** I like that. Is that pages 5, 19 and 24?

**The Chair:** Yes.

**Mr Morrow:** Thank you very much. That is what I was trying to ask.

**The Chair:** We will now move on to page 4.

**Mr Sorbara:** Prior to moving on to page 4, I want to have it confirmed from you, sir, that the motions on page 1 and page 2 remain stood down and that we will deal with those subsequent to today's business.

**The Chair:** That is correct.

**Mr Sorbara:** Before I move this, just let me explain to the committee, by way of preface, why I am moving this. If I can direct your attention to subsection 4(2) of the act, as proposed in subsection 1(1) of the bill, it says: "The council in passing a bylaw under subsection (1) shall take into account the principle that holidays should be maintained as common pause days."

What a lovely thought. The problem is one we have alluded to and spoken about for a number of weeks in this committee: that unless this bill defines for municipal councils what the government means by a "common pause day" with a statutory definition, this little piece of devilish drafting is going to drive municipal councils crazy.

My good friend the Solicitor General, as a former mayor of one of the great municipalities in the province, Oshawa—

**Hon Mr Pilkey:** He is talking sense; listen to him.

**Mr Sorbara:** The Solicitor General acknowledges that I am talking sense. You cannot have this section unless you define what "a common pause day" means. We would support this section if we could define "common pause day" by saying, "a day when people are free to do as and what they please, including shop on Sunday," or some other definition suggested by the government. In the absence of a statutory definition for the phrase "common pause day," it is going to be terribly difficult for any municipal council to have any real consistency in dealing with applications for a bylaw.

We have argued this, we have asked for a definition, we have asked for a working definition in the committee, and Mr Mills, the parliamentary assistant, who apparently wants to speak on this, has refused to give us a working definition. The Solicitor General refuses to provide a statutory definition; and what are we to do? What are municipal councils to do when they do not know what the government means by "common pause day"?

Bob Rae had great political fun arguing for a common pause day during the campaign, and he had great fun during the considerations of Bills 113 and 114, while he was in opposition, saying that his party believes in a common pause day.

The United Food and Commercial Workers know what a common pause day is, at least in their mind. They believe that

it is a day when most people do not have to work and most businesses are not open. That is a reasonable definition. I think it is one that Gerald Vandezande would like. Do I get a confirming nod? That would in his view be a common pause day, and frankly in my view that would be a good definition of a common pause day. But this act, as it is set out, does not create a common pause day. It allows for a few businesses—

**Mr Morrow:** On a point of order, Mr Chair: What motion or what amendment are we speaking to at the present time? There is no motion or amendment on the floor, is there?

**Mr Sorbara:** Oh, that is shocking. He is right.

**The Chair:** There is no motion yet.

**Mr Morrow:** Thank you very much, Mr Sorbara.

**Mr Sorbara:** I acknowledge that we have not yet moved the motion.

**The Chair:** Mr Sorbara was going to do a quick prelude.

**Mr Sorbara:** I fear, sir, that as soon as I move this motion, our very competent clerk will whisper in your ear, you will get off your political motorcycle, for a moment—I regret that I missed that debate—and make a ruling. So I will just end by saying that if the government had the courage to put in a definition of a common pause day, even if it were to adopt Gerald Vandezande's definition or the United Food and Commercial Workers' definition, at least there would be some consistency in the bill. This bill, in the absence of a real definition, is a fraud because it does not create a common pause day. It allows, under some interpretations, virtually any business that wants to do so to apply and get permission to open, and from another perspective it will deny many businesses that ought to stay open on Sunday the right and the opportunity to do that.

When under those circumstances you put forward substantive provisions like that and you fail to define a common pause day, you are going to create terrible problems for my friend the Solicitor General when next he is mayor of Oshawa, for surely he will not represent his riding for more than one term, because we are going to win that riding next term. But he will return as mayor of Oshawa, and this will create problems for him and every mayor in every council right throughout Ontario. So I will move as follows—

Interjection.

**Mr Sorbara:** Well, we have woken up Mrs Mathysen and that is good, because now that it is 4 o'clock it is probably appropriate.

**The Chair:** Mr Sorbara moves that subsection 4(2) of the act, as set out in subsection 1(1) of the bill, be struck out.

**Mr Sorbara:** I was expecting a ruling from the Chair that the motion is out of order, because—well, do you want to make an argument?

**Mr Morrow:** No.

**Mr Sorbara:** Let's hear your arguments as to why it is out of order. I am not going to make the arguments.

**Mr Mills:** It is not within the four corners of the bill.

**Mr Sorbara:** I have had my say on it, and I want to say no more. I simply think you are creating very serious



problems for municipal councils when you ask them, as this section asks, to maintain holidays as common pause days and you do not tell them what common pause days are. I would appreciate, as debate arises on this subsection or this motion or this amendment, that at least one of the government members has the courage to put forward in debate a working definition for municipal councils of "common pause day."

This is going to be litigated. Gerald Vandezande is going to take some municipal council to court when it grants a bylaw allowing, say, the Eaton Centre to open, saying that they have not fulfilled their statutory obligation to maintain a common pause day. Then the courts are going to say, "It's up to us now to define what a common pause day is." Surely the government ought to have the courage of its convictions and put into statutory language what it means by "common pause day." I do not know what it means; the general public does not know what it means; the shopkeepers do not know what it means; the courts do not know what it means; Gerald Vandezande does not know what it means. Surely we have an obligation to tell everyone in this province what you mean by "common pause day" in subsection 4(2).

**Mr Mills:** Is this out of order, Mr Chair?

**The Chair:** No, it is not out of order. Further debate, Mr Carr.

**Mr Carr:** Since it is in order, I will speak to it. I will start off by saying I will be supporting the motion. This particular clause that is being referred to, I do not believe you can legislate it. I do not believe it has been clearly defined, even though we asked for it during this period. I do not think this bill will allow it to happen, even though that is the intent. I do not think that is what will happen if this bill passes, notwithstanding some of the changes that have occurred. I do not believe you can have a statutory definition of this, and as a result I will be supporting the motion.

**Mr Mills:** I would just like to say that during the summer tour, if my memory serves me right, this was the daily favourite question of yourself, Mr Sorbara, or one of your colleagues: "Give us the definition of a common pause day." I think I said at that time that if you do not know what the common pause day is along with the rest of the population of the province, I apologize, but you are out to lunch, because—

1610

Interjections.

**Mr Mills:** Let me have my say—because the council in passing the bylaw under subsection (1) is going to maintain the principle that holidays are to remain as common pause days.

**Mr Sorbara:** Does that mean the store can open or close?

**Mr Mills:** The principle of the holidays. We in Ontario have come to know that the common pause day is Sunday. I mean, the buses do not run, the trains—

**Mr Sorbara:** They certainly do. The buses run all day Sunday.

**Mr Mills:** It is limited.

**Mr Sorbara:** Oh, heavens.

**Mr Mills:** Do not keep interrupting me.

**The Chair:** One person at a time, please.

**Mr Mills:** Do not keep interrupting me. The schools—

**Mr Sorbara:** You are talking nonsense.

**Mr Mills:** The schools are closed. Are the schools open on Sunday?

**Mr Harnick:** Schools are closed on Saturday too.

**Mr Mills:** Yes, but—

**Mr Harnick:** Why do we not have Saturday as a common pause day?

**The Chair:** Order, please. Order.

**Mr Sorbara:** There is a little interjection calling upon the help of the Lord on the Lord's Day.

**Mr Mills:** I would like to go on, Mr Chair. When this was brought to the Supreme Court of Ontario, it had no difficulty in recognizing the terminology of the common pause day as being Sunday. It did not have any difficulty with that. In the course of the discussions, it accepted that concept—that is the Supreme Court of Canada. It accepted the concept that the common pause day is Sunday. The definition adds nothing to the efficacy of the legislation, and I do not believe the discussion we are having here actually falls within the four corners of Bill 115. I do not think we should be talking about it, and that is it. If we do not know, Mr Chair, what the common pause day is, well, I am wondering where we are all at.

**Mr Harnick:** I just want to respond to the Liberal amendment, and I am going to be supporting that amendment. I do not believe in a common pause day in Ontario because there is no such thing as a day that is common to everyone. You can call it a "pause day" or an "enforced pause day," but do not call it a "common pause day," because it may be your pause day but it is not my pause day. The term "common pause day" is, to say the least, misleading.

I also refer to the fact that when I asked the minister, who is here, what the reason was for picking Sunday as a common pause day, he said it was tradition. Well, I do not know what tradition that can be, other than a religious tradition, and he could not tell me either. So I think if you are going to proceed with this piece of legislation, at least call it an "enforced pause day"; do not call it a "common pause day", because that is totally misleading. It is as misleading as the Liberals calling the former Bill 68 the "Ontario motorist protection plan," because it does not protect anybody. This bill is not common for everybody and Sunday is not a common pause day for everybody. So I would urge the minister to at least be forthright about what he is doing and get rid of this idea of a common pause day, because it is not.

The other thing I would like to say—and I would like to put it to Mr Mills, whom I have the greatest respect for, but I do not know what universe he is living in these days—that in Metropolitan Toronto, where I live, buses run on Sunday, restaurants are open Sunday, bars are open on Sunday, the Blue Jays play baseball on Sunday, the Argonauts play football. There are concerts in this city on the so-called common pause day. Hospitals are open, doctors are working, nurses are working. Radio stations remain on the air. People work at those radio stations. People watch

television on Sunday. Movie theatres are open on Sunday. For God's sake, people even shop in stores that are less than 7,500 square feet on Sunday. I have yet to see one of those people go to hell.

**Mr Mills:** We are not talking about going to hell.

Interjections.

**The Chair:** Can we have one speaker at a time? Mr Harnick.

**Mr Harnick:** I cannot for the life of me see who you are trying to fool by perpetrating this notion of a pause day, let alone a common pause day. I would urge the minister to at least get rid of that phraseology of "common pause day" and recognize that Ontario is made up of multiracial and multireligious groups. The old Ontario of 50 years ago that was all white Anglo-Saxon Protestant no longer exists, but obviously this is the group that this government directs its legislation to. This is the group that this government is going to make a little more equal than the rest of us. I think it is the height of hypocrisy for an NDP government to proceed with this legislation.

**Mr Sorbara:** I just have two things to say. First of all, I do not appreciate Mr Mills suggesting, in my wondering what the government means by a "common pause day", that I am out to lunch. It is a very important issue. Councils are going to have to ask that question, and no definition has been put forward. The Supreme Court of Canada did not—I repeat, did not—have to deal with the statutory phrase of "common pause day." They upheld a bill which dealt with the closing of stores on Sunday and they justified it notwithstanding the Charter of Rights on the basis that it was worker legislation, allowing those workers time off. Extrapolated out of that case was an NDP pseudophilosophy dealing with "common pause day". I regret that he has not been able, through four and a half months, to put a definition on the table. I recommend that we vote on this now.

**Mr Mills:** On a point of privilege, Mr Chair, I would just like to tell my colleague across the way: I did not mean any derogatory tone in saying that you are out to lunch. It was perhaps an ill-timed phrase that meant you are not with what I perceive to be what everybody is with. I apologize if I offended you.

**The Chair:** Any further debate on the Liberal motion?

The committee divided on Mr Sorbara's motion, which was negatived on the following vote:

#### Ayes—4

Carr, Harnick, Poirier, Sorbara.

#### Nays—6

Carter, Fletcher, Mathysen, Mills, Morrow, Winniger.

**Mr Sorbara:** Does that mean we lose?

**Mr Morrow:** You lost again.

**Mr Fletcher:** You had better get used to losing.

**The Chair:** On to page 6.

Mr Carr moves that subsection 1(1) of the bill be amended by adding the following section to the Retail Business Holidays Act:

"4.3(1) This section sets out the tourism criteria that must be met before

"(a) a municipality may pass an exempting bylaw under subsection 4(1); or

"(b) the Lieutenant Governor in Council may make an exempting regulation under subsection 4.1(1).

"(2) Retail business establishments in a geographic area may be exempted if the area has characteristics which fall under two or more of the following categories:

"1. The area has historical or natural attractions.

"2. The area has cultural or ethnic attractions.

"3. The area provides a concentration of hospitality services.

"4. The area predominantly provides for shopping activities which feature a unified concept or theme, farmers' markets, the sale of heritage or handicraft items, the sale of items unique to the locale or other specialized shopping activities catering to visitors.

"5. The area provides access to hiking, boating, camping, fishing or other outdoor recreational pursuits.

"6. Fairs, festivals or other specific event attractions are held in the area.

"(3) A geographic area may contain one or more retail business establishments and, if more than one, they need not necessarily be contiguous to each other."

**Mr Carr:** As I stated previously, what we are attempting to do with our amendments is to take the government bill which we see coming through and try to make it something workable, because unfortunately the entire bill, in my estimation, will not achieve its goal. We have attempted to improve upon the government's bill. I wanted to state that clearly. If it had been our choice and we had had the luxury of being in power we would not have brought in a bill such as this. What we are attempting to do is to move the regulations into the bill. The very clear reason for that is because, as has been mentioned on many occasions by a couple of members from the NDP, ie, Mr Kormos and Mr Phillips, during some of the debates over other bills—namely the Police Services Act—when you leave things to the regulations, they can be changed at the whim of a few select individuals.

1620

We all know what happened to the famous oath to the Queen when it was left to the regulations. Something that was popular with the people of this province was changed without debate.

What we are hoping to do with this particular motion is to allow the regulations to be moved into the bill so that they cannot be changed. If, for whatever reason, they need to be, the government of the day will have to bring it before the elected people to do it.

The tourism criteria are the whole essence of this bill. That is why we chose to put that part of it in. It is what everything hinges on. I suspect it will not pass. Obviously I know it will not, because they have already struck the committee of stakeholders to take a look at the regulations; they would not be able to put it in the bill and then have this group going around looking at it. I know this will be defeated. But if we are going to be upfront with the people



of this province—because it is so important to this piece of legislation—I feel it should be in the bill and not left to the regulations.

I say to some of those people, one stakeholder in particular who is here, you are going to be attempting to look at the tourism criteria with a view to making them tighter, but I can tell you, the government of the day can make a decision to change it with one stroke of the pen later on because a poll happens to change or the weather happens to change or a particular area needs support, and this particular illustrious group will never get a chance to debate it here again.

Some of those in the stands may say that is a good thing, but I personally do not, because all of us who sit on this committee are accountable and can be accountable with our very jobs next time if we do not do a good job. If the reality were known how the regulations get pushed through by some of the officials, if the truth were known, I think the public would be shocked by the number of things that can get through. The regulations are fundamental to the bill.

I wish those stakeholders good luck in their deliberations. The group that is going to be making the decisions is going to have a very difficult task. I wish this could have been done before the bill had been introduced, and I must say at the present time, I think what happens sometimes is that political motives get in the way. If we had sat back, had this wonderful group come together—some of whom are here—and done this, and looked at it before, then these particular regulations could have been put into law. But in order to please certain groups, for political reasons we rushed ahead with this bill. We did not do it properly like it should have been done.

When the tourism criteria were going to be such an important part of it, and they knew that going way back to the former Solicitor General, we should have had those stakeholders together and made a decision. By this time they probably could have come out with criteria that would have ended a lot of the debate. At least both sides would have known they had had their fair debate on it.

The government could have had the opinion stacked, because obviously going into it you know where each of the individuals stands in his assessment. Each group would have had a chance to convince the other group of the merits of its particular position, and then the bill could have included the tourism criteria. That is what has created most of the problems, and it came as a result of a lot of people saying the government had not done anything. So this bill was rushed through.

We are seeing very clearly now it will not expedite the process, because what will happen is, we will still be going at this particular debate. This is all part of the reason that I felt this particular bill was so flawed. Instead of doing it properly and correctly and letting the stakeholders decide before the bill was introduced, we do it backwards. We are coming at it from a backwards standpoint.

I cannot stress enough to the government members how, when it is so fundamental to this particular piece of legislation, it should be elected officials who will be accountable, who should be making the decisions.

As has been stated before on a number of occasions, these particular regulations can be changed for better or worse as we go along. That is why we introduced this particular motion. As I said earlier, I do not think they will go anywhere. As a matter of fact I would bet the farm on it, because obviously they will not be supporting this.

I really believe it is important—and if you are going to come with a piece of legislation with the tourism criteria, you should at least have the courtesy—to entrench it in the law so that it cannot be changed, so that people will know that what they are doing now will be something that will be in for a considerable period of time. That, Mr Chairman, is the reason for the motion and my comments about it.

**Mr Mills:** I cannot support your amendment for a very obvious reason. What this will do is effectively take away the authority from cabinet to make the regulations.

**Mr Harnick:** That is precisely the reason.

**Mr Mills:** That, I may say, is unacceptable to myself and probably to the other members of my caucus.

**Mr Harnick:** That is right. You guys all believe in the closed-door policy.

**Mr Mills:** That is really the basic reason.

**Mr Harnick:** Open politics. It is open to people behind closed doors.

**Mr Sorbara:** I regret to hear the reasons why Mr Mills, and I presume his caucus, is not going to support this amendment. That is the one reason he should not have given. To say it is important that cabinet, behind closed doors, sets the rules is an entirely inappropriate reason.

I do not intend either to support the motion as moved by Mr Carr, and I want to tell the committee precisely why, but I want to preface my remarks by saying that I think Mr Carr has done a marvellous job, along with Mr Harnick, but particularly Mr Carr, because he has been with us through all of these hearings—with no offence to Charles Harnick—in carrying a view on this bill. He attended, I think, all of the public hearings, and he has participated vibrantly in the debate. He has worked very hard to put a position forward on behalf not only of his constituents, but his party and the province, and by and large, I support the thrust of his view on this terrible bill that we are dealing with.

The reason I do not intend to support it is quite simple. I do not believe the tourist criteria should be the only criteria upon which a council might pass a bylaw. The motion that was just defeated—not the one we just voted on, but the first one we voted on today—states our position, and that is, there should be two general criteria if we are going to have this municipal option bill, and those two criteria should be tourist criteria and economic development.

I would not, under those circumstances, support a motion that the tourist criteria, provided for through regulation, ought to be enshrined in legislation, because that would deny the province the flexibility to allow tourist criteria to change and develop as we develop a better sense of how businesses will react to this bill. Although I understand the purpose for proposing the amendment, I think probably it is not a good idea to include these criteria in legislation.

**Mr Harnick:** I am disappointed that Mr Sorbara has taken the position he has, and I would like to put it to Mr Sorbara that he has to recognize that his economic criteria have gone down in the defeat of his proposed amendment, so the only criteria Mr Sorbara has left are the tourism criteria.

Mr Sorbara stated that if they were legislated and became part of the legislation and not the regulations, they could not expand in scope. I put it to Mr Sorbara that the last thing this government is going to do is expand those criteria in scope, and the only way we will be able to keep these criteria as broad as they are now is if they are enshrined in the legislation. I put it to every member of the NDP caucus who is on this committee and the minister as well, if this bill is so good and your marching orders are to go to the wall and pass this bill as it is written without any amendments or any consideration of the Progressive Conservative Party amendments or the Liberal Party amendments, what do you have to lose by making these criteria part of the law?

Certainly your reluctance to do this indicates to me and to the public that you do not really believe this is a good bill. So I urge Mr Sorbara to reconsider. I urge the NDP members who believe this is such a good bill and who have their marching orders and are going to follow those marching orders without any other consideration, if the bill is so good, make these tourism exemption criteria part of the bill itself and not part of the regulations. Thank you.

1630

**The Chair:** Thank you, Mr Harnick. Mr Morrow?

**Mr Morrow:** Just give me a second, Mr Chair, I am having a hard time because I now have to agree with Greg Sorbara.

**Mr Sorbara:** Oh, my God. Lightning will strike you.

**Mr Morrow:** I know. I am waiting, Greg. Actually I agree with Gord and Greg, and I cannot support this amendment either, because if we include the regulations in the bill, every time we want to change a reg or bring a new reg in, that means we have to go for hearings. For the first time in Ontario's history we took regulations out on to the road this summer. I think we have made a substantial move. We have done a lot with the regulations. The regulations have gone back to be reworked, and therefore I will not be supporting Mr Carr's amendment.

**The Chair:** Thank you, Mr Morrow. Further debate? Seeing no further debate, all those in favour of the PC motion? All those opposed?

Motion negatived.

**Mr Carr:** At least Charles supported me.

**The Chair:** With this one being defeated, 8, 18 and 26 will be taken away.

**Mr Harnick:** What about page 23? I think 23 comes out as well, if I am not mistaken. Just to save us all some time so we can get this bill enacted and—

**The Chair:** Mr Carr has the option whether he wants this one left in or not.

**Mr Carr:** Let's wait till we get to 23 and we will decide. That will give me time to reflect.

**The Chair:** Now page 9.

**Mr Sorbara:** Mr Chairman, may I just beg the indulgence of the committee again and ask that 9 and 10 be stood down and that we deal with 11, a government amendment—which ought to be defeated, by the way—and that we deal with 9 and 10 directly after we have dealt with 11. Is that okay?

**The Chair:** Do we have unanimous consent to stand them down until after we deal with 11?

**Mr Sorbara:** I have to step out of the room for about 10 minutes, Mark, and you can have your debate.

**Mr Morrow:** Greg, you have got it.

**The Chair:** We will move on to 11.

**The Chair:** Mr Mills moves that subsection 4(6) of the Retail Business Holidays Act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

“(6) Before passing a bylaw under subsection 1(1), the council

“(a) shall hold a public meeting in respect of the proposed bylaw;

“(b) shall publish notice of the public meeting in a newspaper, having general circulation in the municipality at least 30 days before the meeting is to be held; and

“(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed bylaw.”

**Mr Mills:** I would just like to put on the record that the intention of this amendment is to delete the requirement for a hearing and to restore the public meeting and notice requirements found in subsection 4(2) of the existing legislation. The rationale behind this is that the current law requires a municipality to hold a public meeting and to advertise notice of the meeting in a local newspaper at least 30 days prior to the meeting, and anyone attending the meeting is entitled to make representations. A formal hearing could intimidate its participants, including small, independent retailers and employees. The reference to a hearing requires, by law, a potentially lengthy, cumbersome and expensive process.

A public meeting and notice requirement compels a municipality to receive the news of those interested in a less formal forum. A hearing will involve formal presentation of evidence and argument, and will inevitably involve lawyers and high-priced experts. It also provides an unfair advantage to those interests with substantial resources to back their position; for example, the larger retail chains. It also alleviates a potentially very onerous administrative and financial burden on municipalities. The lack of a formal hearing can subsequently be addressed by guaranteeing a hearing on appeal before the Ontario Municipal Board.

I hate using this phrase, it is a worn-out phrase, but it ensures a level playing field for all interested parties. Those are the comments I would like to make on this amendment.

**Mr Carr:** I will not be supporting this motion. I believe that municipalities, under a lot of other bylaws and so on, know how to handle their dealings with the public. On the one hand, the government says it is up to the municipalities to decide whether they are going to be open, the



fundamental principle of this bill. It will allow them that power to decide whether they are going to take the tourism criteria, it will allow them to make the judgement on the tourism criteria, which is fundamental to the bill, but then it turns around and tells them on something as simple as a public meeting how they will handle it.

I think it is an offence to most municipalities. I suspect most of them right across this province—or a lot of them, certainly—have done a better job in making the public aware of their particular bylaws or anything that they are passing of a controversial nature.

I just think it is a slap in the face to municipalities to give them a tremendous amount of power to decide whether they are going to be open, to lay out tourism criteria that is broad enough and where basically it is up to the municipalities to decide whether they want to be open, and then on the other hand to say, "Now we're going to tell you how you're going to hold a meeting and how many days you're going to have," and so on. I do not think it needs to be done.

Mr Mills talks about a level playing field. I think some of the municipalities and the elected officials will attempt to expedite matters, because some of them may see it as not being an important issue to their particular community, as is the case in Halton, my region. Most of them say they have not had any request to be open, although that may happen once this bill passes and some of the businesses decide to do that.

On the one hand they say: "Here's a tremendous amount of power. It's up to you, you can decide," and then on the other hand they say, "Oh, by the way, here is what you have to do if you are going to hold a public meeting." I suspect a lot of the municipalities will take a look at that and say, "There are the politicians in the Ontario government telling us what to do." I will not be supporting this particular motion.

**Mr Mills:** In reference to some of the comments that my colleague Mr Carr has made, it is my understanding that when we were on the tour the desire was very apparent from many municipalities for striking out the hearing and the formality of that in favour of a meeting because of the costs and the general feeling that this would be a rather cumbersome and expensive process. I just leave that with you.

Motion agreed to.

1640

**The Chair:** I would suggest that we stand 12 down until Mr Sorbara comes down. Do we have unanimous consent?

Agreed to.

**The Chair:** We are doing the 13 replacement on the yellow sheet.

Mr Mills moves that subsection 1(1) of the bill be amended by adding the following section of the Retail Business Holidays Act:

"4.3(1) Any person who objects to a bylaw made by the council of a municipality under section 4 may appeal to the Ontario Municipal Board by filing a notice of appeal with the board setting out the objection to the bylaw and the reasons in support of the objection.

"(2) The notice of appeal must be filed with the board not later than thirty days after the day the bylaw is passed by the council.

"(3) The board may, if it is of the opinion that the objection to the bylaw set out in the notice of appeal is insufficient, dismiss the appeal without holding a full hearing, but before doing so shall notify the appellant and afford the appellant an opportunity to make representations as to the merits of the appeal.

"(4) The board may,

"(a) dismiss the appeal;

"(b) dismiss the appeal on the condition that the council amend the bylaw in a manner specified by the board; or

"(c) quash the bylaw.

"(5) If one or more appeals are taken under this section, the bylaw shall not come into force until,

"(a) the day all appeals have been dismissed under subsection (3) or clause (4)(a); or

"(b) the day the bylaw is amended in the manner specified by the board under clause (4)(b).

"(6) The board may, without a hearing, correct an error in an order or decision under this section if the error arises from an accidental slip or omission.

"(7) Sections 42 and 94 of the Ontario Municipal Board Act do not apply to an appeal under this section.

"(8) The board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9).

"(9) The Lieutenant Governor in Council may make regulations prescribing a period of time for the purpose of subsection (8)."

**Mr Mills:** I have one or two comments I would like to make. You can see the time for appeal, where the notice of appeal must be filed with the board not later than 30 days. The board may, if in its opinion the objection to the bylaw set out is insufficient, dismiss the appeal without holding a full hearing.

The powers of the OMB and what it can do: The board may dismiss the appeal, dismiss the appeal on condition or quash the bylaw, and so on.

Under subsection (8), the board shall use its best efforts to decide appeals under this section within the period of time prescribed under subsection (9).

This amendment provides an appeal to the Ontario Municipal Board for anyone objecting to a tourist exemption bylaw passed by a municipality. The OMB may dismiss the appeal with or without a full hearing, may dismiss the appeal on the condition that the bylaw be amended in a specific manner or quash the bylaw, and the bylaw will come into force on the 31st day after its passage unless a notice of appeal has been filed during the period. That is covered under the new subsection (4)(a).

The OMB appeal route will provide a forum for a sober second thought. It will be cheaper, faster and more accessible than recourse through the courts.

The OMB has expertise in dealing with municipal bylaws and it can correct municipal errors by quashing or by requiring an amendment before the approval is granted, and resolution of the issue generally within a 90-day period promotes some sort of certainty.

Those are the comments I am going to make so far.

**Mr Harnick:** I bet he is going to go for a long, long time.

**Mr Chiarelli:** I can go for a very, very long time, but I will just go for a long time. I have raised a number of concerns on several occasions with respect to the whole issue of providing appeals to the Ontario Municipal Board from bylaws dealing with Sunday shopping. I think my concerns are substantive concerns. I really believe they are realistic concerns given the present status of the Ontario Municipal Board, given the present backlog of the Ontario Municipal Board in Ontario.

I think it is important to put in perspective what we are doing here. We have a very contentious issue: Sunday openings or Sunday closings, issues of work on Sunday. We have in Ontario some very active, some very volatile and some very effective special interest groups animated around this issue of Sunday shopping. What we are doing is providing these special interest groups with a forum to continue what amounts to a fight. I have said on a number of occasions that this committee and many legislatures and many good legal minds have indicated that we ought not to create forums for fights. We ought not to set one part of the community against another part of the community.

That is why I had previously referred to the report of this committee, which was unanimously adopted, dealing with alternative dispute resolutions rather than tossing people into what is a very adversarial system.

One of the recommendations this standing committee on administration of justice made to our Legislature last June was recommendation 3:

"The committee recommends that the government review present and future legislation and that it build in alternate dispute resolution procedures where they would lead to a less costly and more expeditious resolution of disputes that could arise under the statute. The committee further recommends that alternate dispute resolution techniques be put at the disposal of agencies, boards and commissions in the ways proposed by the Macaulay report."

1650

As I mentioned last week, we had some of the best legal minds in the country come before this committee to recommend to our Legislature the whole implementation of alternative dispute resolution techniques. What do we have in this amendment by the government?

I think we should juxtapose the recommendation of these legal scholars for alternative dispute resolution mechanisms in new legislation with the comments made last January by John Kruger, the chairman of the Ontario Municipal Board, before the standing committee on government agencies. He talked at great length before a committee of this Legislature on the backlog and the inefficiencies of the Ontario Municipal Board. I am just going to look at one of the paragraphs from the Hansard of that particular committee. John Kruger states as follows:

"The backlog presently exists. It takes 13 months to get a hearing before the board and that is increasing. In this time, what has happened, although the numbers of appeals have stabilized, is that the appeals are getting longer. There is hardly an appeal where the environment does not now

enter into it. We are hearing that even on consents. For example, we have in the system at the moment 1,713 assessment appeals. That involves some 37,000 complaints. So the workload on the board is enormous and we have to find better ways of handling this internally and administratively. We have to look at things like alternative dispute resolution, we have to look at things like mediation and all of these methods, rather than just put on more members. That is what we are going to attempt to do."

What this amendment does in reality is push us back into the 1950s, 1960s and 1970s for a solution to the problem. The reason it is imperative from the government's perspective that this legislation be passed immediately is strictly a political imperative. It has to do with having made a promise, then having made a mistake in introducing legislation that was ineffective and then having to find a way to extricate itself from a situation that is politically embarrassing for the government. You know in your NDP caucus that this is a very divisive, very controversial issue, and you just want to deep-six it and get it out of the way because it is a headache to you.

I think the way you are doing it is quite irresponsible. If you were to look at a sensible, reasonable approach, if you were going to have the degree of openings or the degree of closings that you intend to have, knowing it is going to be very controversial when these bylaws are passed, then you are being irresponsible by throwing all these special interest groups and small business people into a very adversarial system.

You have the responsibility of government. You have the responsibility to create an alternative dispute resolution system that makes sense to the players, the stakeholders, that makes sense for the bureaucratic mess that the OMB presently finds itself in, and makes sense for looking at ways of resolving disputes for the 1990s and into the year 2000.

You have not followed the best legal advice that exists in Canada in drafting your legislation. I do not agree with the substance of your bill and the substance of your legislation, but having said that, I think you have an obligation to use a reasonable approach in resolving these disputes. There is no indication on the part of this government that it has any sense of the problem it is creating by foisting this issue on the Ontario Municipal Board.

I am looking for another quote of Kruger's which is very relevant to that recommendation of the alternative dispute resolution recommendation. I want to refer to John Kruger's testimony again before the standing committee on government agencies:

"The state of the board is that we are making our best efforts. Our members are working very hard. Their productivity per member is increasing, but it is just the reality. Our hearings are getting longer and longer in numbers of days. What a lot of people do not realize is that anything that touches land use gets into socioeconomic questions"—just keep that in the back of your mind—"for instance, when Mr Farnan, the minister, announced he was going to have group homes rather than incarcerate people. Fine idea; nothing wrong with it. I shuddered, because every group home hearing—you can imagine what it is like in a community. If it is 12 days of hearings, it is two



days of evidence and 10 days of emotion. One of the members sitting here can tell you all about that up in Sault Ste Marie, where we have just been through that."

This is John Kruger, one of the most experienced bureaucrats and administrators in the province, the current chairman of the Ontario Municipal Board, saying that the worst thing you can do to the OMB is throw socioeconomic questions before the Ontario Municipal Board because you are going to get involved in 10 days of emotional arguments and two days of objective, independent evidence.

I am asking you, members of the government, is the question of Sunday shopping a socioeconomic issue? Most definitely. You know what is going to happen to that issue. You know what is going to happen across this province with every bylaw that is passed in almost every community. I ask you, looking at it from the social side, is it reasonable to throw people into an adversarial system? Or I ask the parliamentary assistant to the Attorney General, is it better to look forward at alternative dispute resolution that makes sense, something you are aware of and familiar with? You know this amendment is simply a politically expedient way to solve a political problem. It has nothing to do with doing something substantially beneficial and forward-looking for our society. That is referring very briefly to the sociological side.

Look at the economic side of this particular amendment providing appeals to the Ontario Municipal Board. If I were a small business person in Prescott-Russell or the Bruce Peninsula or wherever and I was a proponent of a bylaw for Sunday openings and I brought forward a bylaw to a municipality, if that bylaw were passed and if there was one objector from my village or community or from somewhere 800 miles across the province who was part of a special-interest group, he could object to the Ontario Municipal Board. What does that do to that small business person who first of all is probably asking for this particular bylaw as a survival measure in a very marginal type of business? What will this process do to that small business person from an economic point of view?

First, you know he is going to have to retain expert counsel to go to the Ontario Municipal Board to respond to this particular appeal, at great expense. For a government that says it is sensitive to the little person, to the small business person, how can you justify doing that to a small business operator and thousands of small business operators across the province? I think it is unconscionable, I think it is unreasonable and I think it is unrealistic to dump this type of process on the people of the province. You are dumping it on small business people; you are dumping it on the Ontario Municipal Board, which does not want it and cannot handle it; you are dumping it on the taxpayers of the province. There is no way that you have any realistic expectation of providing appeals in 90 days, that you are going to be able to provide that with less than \$4 or \$5 million or more of additional budget for the Ontario Municipal Board.

Do not kid the people of Ontario, do not kid the members of this Legislature and do not kid your own caucus. When your Solicitor General stands up and issues a press release and says that these bylaws are going to be dispensed with in 90 days—

**Mr Mills:** Right on.

**Mr Chiarelli:** —that is plain, unadulterated BS and it ain't right on, Mr Mills.

**Mr Mills:** What does "BS" stand for? We do not know what you are talking about.

1700

**Mr Chiarelli:** The fact of the matter is, anyone who has municipal experience as an elected official, who has experience as a practising lawyer, who has experience in the administration of the Attorney General's office and various other ministries, knows absolutely—

**Mr Morrow:** Rule him out of order.

**Mr Chiarelli:** Excuse me. Did somebody say to rule me out of order?

**Mr Morrow:** No, we were just talking. It's just a joke.

**Mr Chiarelli:** Oh, you were just kidding.

Interjections.

**The Chair:** Order, please. Order. One person at a time.

**Mr Chiarelli:** I think the record should show that the government members think my comments are a bit of a joke and have no substance—

Interjections.

**Mr Chiarelli:** —and I think the people of the province will ultimately determine that issue, because the issues are indeed very important to the administration of government, to the administration of municipalities in this province.

As I was saying, I think it is a monumental con job of the first order to suggest in any way, shape or form that these bylaws will be able to be dispensed with in 90 days.

**Mr Mills:** Wait and see.

**Mr Chiarelli:** It is a virtual impossibility. One of the government members, Mr Mills, says, "Well, wait and see." I think that you, Mr Mills, are going to have to confront the fact that you are being sold a bill of goods by your minister, and I would hope not by the senior bureaucrats, because I would have to think that you are going against the best advice that is available in recommending that these matters can be dispensed with in 90 days. All of my 18 years of experience in the practice of law indicate to me that it is a virtual impossibility.

I want to mention some additional comments of Mr Kruger in his testimony last January before the standing committee on government agencies, a very extensive testimony, as I am turning the pages. I would recommend it as required reading for the members of the committee.

Another member of the Ontario Municipal Board—this is not Mr Kruger speaking but Ms Fraser—refers to some comments by Mr McGuinty at that time:

"Mr McGuinty, there are some points that I would like to draw to your attention. I know when I joined the board and was considering the matter of the backlog and I started thinking about it, my own analysis was that in the circumstances it would have been more surprising if there were not a backlog than if there were, for a number of reasons. This is the analysis that I have come up with, and I have to emphasize this is a personal one. There are an increased number of acts"—that is statutes—"that the Ontario Municipal



Board is responsible for that can generate appeals to the board. If you look at the number of acts"—or statutes—"over the years that we are responsible for, and you can see them outlined in each annual OMB report, you will see that the numbers are growing. I think it is 121 acts"—or statutes that the Ontario Municipal Board has responsibility for.

So we have basically another experienced person, knowledgeable in these matters, saying that governments have been dumping too much responsibility on to the Ontario Municipal Board. I believe, with this particular issue, you are going to be opening the floodgates.

I also want to refer to a letter which Mr Kruger sent to a small businessman from the city of Nepean. This gentleman came in to see me earlier this year as well as a number of other MPPs. I understand he was able to arrange appointments with a number of MPPs, but of course the most important one for this particular government, Ms Gigantes, was not available for an appointment to see him.

So, unfortunately, he was left with the dregs in opposition to talk to, but he did also get in touch with the Ontario Municipal Board. He wrote to Mr Kruger who, unlike Ms Gigantes, was able to respond personally to this particular small businessman. His name is Mr James C. Ledgerwood, and he is the general manager of Greenside Construction Management Ltd. He is an Ontario land economist. He was quite concerned about the backlog and the process at the Ontario Municipal Board. Mr Kruger, on February 12, 1991, responded to Mr Ledgerwood and this is one of the comments that Mr Kruger made in his letter of only several months ago:

"At the present time, the appeal process is experiencing delays, not so much because of the process itself but because of the current case backlog that the board is faced with and is addressing."

Now, I hear rumours and certain people on the government side mumbling about taking some action to rectify the so-called backlog at the Ontario Municipal Board. I believe Mr Mills mentioned that it would take less than a million dollars to solve the backlog problem and also solve the question of Sunday shopping appeals to the Ontario Municipal Board. I believe the minister made a kind of off-hand comment to me a week or two ago that the Ontario Municipal Board process is being looked after. We have seen no statements made in the House. We have not even seen a press release outside the House, but it is obvious that the government has something up its sleeve with respect to the Ontario Municipal Board process, Ontario Municipal Board funding and generally Ontario Municipal Board hearings.

I believe the government is acting in a very deceptive, non-informative manner with the people of Ontario.

I see Mr Harnick is pointing to the parliamentary assistant to the Attorney General.

**Mr Harnick:** He's got that funny smile on his face.

**Mr Chiarelli:** We certainly know that he is going to be making an announcement soon with respect to the Ontario Municipal Board, but the fact of the matter is, on this committee, which is dealing with this issue, we do not have the answers to important questions. The government

has not been able to indicate how many appeals it is estimating will go before the Ontario Municipal Board. It has not indicated how much the additional appeal workload will cost the taxpayers of Ontario. In fact, it does not know.

The government has not indicated and has not done any economic impact study as to what this process is going to cost small business people across the province. You are being irresponsible on every account. Now, you might go back into your little secret caucus, or you might have your little secret cabinet go back and say, "Aha, we're going to solve the problem this way or that way," but you have come forward with no information and no facts which justify in any way the process that you are choosing to implement by ramming this legislation through because you have certain political imperatives.

Mr Chairman, I have raised these issues on a number of occasions before this committee. I have indicated the reasons why I believe the government is being irresponsible.

Just a very brief summary: This legislation is totally contrary to the recommendations of the best legal minds in the country with respect to alternative dispute resolution techniques. We have the testimony of John Kruger himself indicating it is imperative that the Ontario Municipal Board look to alternative dispute resolution techniques to solve its problems. We look at Mr Kruger's commentary indicating with respect to one of Mr Farnan's initiatives that socioeconomic issues are the worst types of issues to dump on the Ontario Municipal Board because it ends up with two days of independent testimony and 10 days of emotion. We see the impact it is going to have economically on small business people to have to go through this process. We see the impact it is going to have on the Ontario Municipal Board by adding to the backlog.

We know there is a price the taxpayers of this province must pay by having to provide additional resources to the Ontario Municipal Board, and this government is not prepared to say what the cost to the taxpayers of Ontario will be.

Mr Chairman, I believe my comments are substantive, they are realistic and they are well-founded, and I think the government is being totally irresponsible by moving this amendment to what is substantively, as well, a bad bill.

1710

**The Chair:** Thank you, Mr Chiarelli. Mr Carr, further debate.

**Mr Carr:** This is the one motion I am opposed to more than anything else. When I said earlier in some of the debates that they took a bad bill and made it worse, it was because of this particular amendment. I am surprised it is being done by a Solicitor General who has a municipal background. Somebody who has had dealings and knows what happens at the Ontario Municipal Board above all else should know the problems that have happened there.

The backlog is 12 to 14 months. It is growing steadily. The government will tell us it is going to put resources into it. Our document, that we received from the Solicitor General, the one that outlines the questions and answers, which I have referred to before, says they will spend about a million dollars. They say to the public, "There you go; we're going to put more resources into it."



The problem is that this time, when we are talking about reallocating resources and closing hospital beds, \$1 million to fund this particular Ontario Municipal Board at this period of time is in my opinion a complete and absolute waste. The worst possible thing they could do with this piece of legislation, they have done: They have put in another roadblock. The \$1 million that is going to be spent, by the way, does not include the amount of money that would be spent on consultants and lawyers and legal fees during this period.

I always wanted to be a lawyer and my hockey career got in the way—

**Mr Sorbara:** Set your career aims higher than that.

**Mr Carr:** —and I guess I had my priorities right at the time. Now I wish I had been a lawyer because I really believe that the people who will be involved in this, and the lawyers and the consultants, will make it very difficult. You are right; I wish I had been like Ken Dryden and I wish I had been a lawyer and with the Montreal Canadiens, and had about eight Stanley Cup rings; but some of us have talent in some areas, some in others. He was better able to stop pucks—

**Mr Morrow:** Gary, you were a much better goalie.

**Mr Carr:** —and I was better able to serve time. Actually, we were compared. Many of you might know that I was compared to Ken Dryden because, as you know, there are two types of goaltenders. There are the ones who are known as a little bit flaky and then there is the tall, intellectual type.

**Mr Sorbara:** Dryden was intellectual.

**Mr Carr:** Ken Dryden and I were thought of in that same light, but then again it was only my mum who was saying that.

**Mr Chiarelli:** Why don't you show this committee what you can do in overtime?

**Mr Sorbara:** His campaign motto was, "The puck stops here."

**Mr Carr:** But all of the things that I have been concerned about have come in with this particular amendment.

Interjections.

**The Vice-Chair:** Order.

**Mr Carr:** I had the pleasure of witnessing what happens before the Rent Review Hearings Board the other day. I spent some time with the group that was appearing before the rent review board and we basically spent an entire day, as I think I related before, deciding whether it would adjourn the hearings. We had consultants. Each side had two lawyers and a consultant. The public gallery was stacked with about 75 people and we literally spent one full day deciding whether they would even adjourn.

So great ideas, great in theory, "We'll put a board together that will review rents and we'll come to a decision." When it comes to actual practice, it does not work. In fact, the people who were there were disgusted with the whole process, and as they were walking out they were shaking their heads. Unfortunately they are very cynical about the process. They know it is a political process that has spurred that on and they were critical of politicians and the political process as a result.

The same situation with the Workers' Compensation Board: a great idea when we put it in, and as you know, we now have backlogs. Literally, on some weeks our offices spend 60% of the time dealing with WCB cases. What they have done is put one more obstacle in the way. I think the public, when they handed over the tourism criteria to the municipalities, would like to have had a decision on it one way or the other. They wanted to streamline the process and this has just made more of a bureaucratic nightmare.

Regardless of what the decision is, I think people want to have a decision quickly. If they lose the decision that is fine, but they do not want to have the process locked up. The government, I think, wants to point to the process as one of the ways in which it has attempted to hold the common pause day. They will say, "There you go." If one municipality does decide to open they will say: "Well, it wasn't our fault, the municipality wanted to open. We're only listening to the people at the grass roots and the municipality, and by the way, it was appealed to the Ontario Municipal Board and as you know, it upheld it, so our hands are clean."

I suspect that is why this was done, the particular amendment that talks about going before it. I suspect that every municipality which decides to open will have to go through this process. I will bet the \$1 million will look like chicken feed compared to what happens.

A lot of times when the people who are involved in putting this together take a look at the costing of it, I suspect they do it in the best-case situations. They do it without taking a look at what happens at the rent review board and the WCB, how they get backlogged, how literally a consultant or a lawyer can tie things up by having delays.

In this particular case that I talked about earlier, the lawyer who was representing one of them was supposed to be at an environmental hearing, so he could not go. They had already had it backed up because one of the other lawyers on the other side had had a death in the family. Now it has been put off and the people who are looking at it are looking at well over a year. The groups that I think will be happy with this will be some of the special interest groups of all sides that are hoping to get another chance to lobby their cause. They will not be content when the municipality spends all the time, effort and energy that it will spend to hear the cases and then will go before another board to take a look at it. It will give them another forum to get their ideas out and to speak about it.

I believe that in this day and age when we are talking about waiting lists at hospitals, when we are talking about the closing of hospital beds, we need to have our resources put to better use. Regardless of how well you say that the money will be new money coming in, I think the money that could be spent on that, if you are going to spend it, would be better spent to get rid of the existing backlog rather than throw more things into the system.

When this particular amendment came through—and I remember it came through on a Friday across my fax machine at the constituency office—I could not believe that this was how you were going to proceed. I do not know who thought of it, whose idea it was, what group was pushing for it, although I obviously heard over the summer



some of those who were; but whoever in the government has the ultimate decision—I guess it is the Solicitor General and the cabinet and in this particular government the Premier, because I think he has really centralized all the decision-making processes—whoever will take the credit, or blame as I believe it will be, is the one who I think has made a tremendous mistake with this.

1720

It is the worst possible thing that could be done. Over the summer we heard from a lot of people out there. They did not want to come before more government tribunals to hear a process which already is broken at the Ontario Municipal Board level. Why anybody would want to put more cases into the system when it is hopelessly backlogged is beyond me. Unfortunately, this is one of the things that I think make the public cynical about politicians and the political process. They take a look at this and say, "This isn't what was called for, other than through a few special interest groups, but that's who you're listening to."

In a day and age when people are saying there is too much government intervention—and, by the way, I will say that is true of all political parties, including the fourth, fifth and sixth parties. In the recent polls of NDP members as well, they also believe there is too much government involved in their lives, particularly at the provincial and federal levels. What we have done is we have indicated to them that we are going to put one more obstacle in the way. A lot of the groups say it is almost like a hurdler: You get over one hurdle and another one springs up.

In this day and age with limited resources, I think it is an absolute waste of time. Never, never could I support this. I will be voting against it. I suspect the government has already made the decision, but I would like to see the person who came up with this idea come forward and say, "It was my idea," because I would like to know who we can blame for this. I understand why they will not, because it is the craziest motion that has been brought before this particular committee on this bill.

You took a bad bill and you made it worse with this. I hope somebody will come forward. I know it is not Mr Mills. He is one of those who would I think agree on this, but somebody has made this decision. I hope there will be freedom for some of the members to step out and discuss this and come up with some of their reasons for it. I will be listening very intently to any of the other members who may discuss it, because I quite frankly think that whoever introduced this has made a terrible mistake. I will add that anybody who votes for this particular motion will be making a mistake. Those are my comments on this motion.

**Mr Winninger:** I would like to reply briefly to certain remarks made by the member for Ottawa West, or the member for York Centre. Sometimes it is hard to tell them apart; they are interchangeable in some respects.

John Kruger, to whom the member for Ottawa West has paid great homage, and who spoke to the—

**Mr Sorbara:** On a point of order, Mr Chairman: Could I have the member for London South explain that last remark about the similarities between the member for Ottawa West and myself?

**The Vice-Chair:** That is not a point of order.

**Mr Winninger:** In any event, I withdraw the remark.

**Mr Chiarelli:** We are both persuasive in debate. That is what he is talking about.

**Mr Winninger:** Yes, that is right. I think they both went to the same school of debate.

In any event, I share the tremendous respect which Mr Chiarelli displays for what Mr Kruger has had to say, and he certainly spoke to the standing committee on government agencies on January 22, 1990. The problem is that Mr Chiarelli has not spoken to Mr Kruger lately. If he did speak to Mr Kruger, he would find that Mr Kruger is quite satisfied that he has the resources and will have the members on his staff to deal with these kinds of appeals.

Certainly the forum for appeal is an appropriate one. Who has more expertise in these matters of appeal of municipal decisions than the Ontario Municipal Board? What is cheaper, taking appeals through the courts or taking them through the OMB? What is faster?

Mr Kruger, when he testified before the government agencies committee, indicated that while he acknowledged there was a backlog at the OMB, he was taking positive measures to deal with the backlog. Two of the measures he mentioned at that time were implementing case management and resorting to pre-hearing conferences. My friends from the bar will certainly know how effective pre-trials can be in resolving cases before they go to the time and expense of a full trial. Certainly experience has shown that 75% of all civil litigation is resolved with an effective pre-trial.

**Mr Sorbara:** You're breaking the back of the shopkeeper.

Interjections.

**The Chair:** Order.

**Mr Winninger:** Dealing with some of these disputes in a pre-trial forum will reconcile a number of these issues before one is ever put to the expense of a full hearing before the OMB.

I note certainly with satisfaction that pursuant to the appeals section, the OMB can dismiss without a hearing if there is not a prima facie case on the face of the record. Again, my friends on the opposition side of this committee will appreciate what it means to have or have not a prima facie case. In this particular case, if there is not a prima facie case, there is no need for a hearing. And if the municipality has erred and is merely correcting an error, again, the OMB can deal with it without a hearing.

I hear the bells of the House, and perhaps that is where we should be.

Interjections.

**The Chair:** This is a 30-minute bell.

**Interjection:** Can we vote on this amendment?

**The Chair:** They are having a vote in the House.

Interjections.

**The Chair:** We will adjourn this meeting until tomorrow.

The committee adjourned at 1727.



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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
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Carter, Jenny (Peterborough NDP)  
Chiarelli, Robert (Ottawa West L)  
Fletcher, Derek (Guelph NDP)  
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Sorbara, Gregory S. (York Centre L)  
Winninger, David (London South NDP)

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First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 5 November 1991

# Journal des débats (Hansard)

Le mardi 5 novembre 1991

**Standing committee on  
administration of justice**

Retail Business Establishments  
Statute Law Amendment Act, 1991

**Comité permanent de  
l'administration de la justice**

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 5 November 1991

The committee met at 1539 in room 228.

RETAIL BUSINESS ESTABLISHMENTS  
STATUTE LAW AMENDMENT ACT, 1991  
LOI DE 1991 MODIFIANT DES LOIS  
EN CE QUI CONCERNE LES ÉTABLISSEMENTS  
DE COMMERCE DE DÉTAIL

Resuming consideration of Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them.

Suite de l'étude du projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.

**The Chair:** I call this meeting of the standing committee on administration of justice to order. I believe Mr Winninger had the floor, still debating page 13, the government motion.

Section/article 1:

**Mr Winninger:** Just to continue where I left off, various objections have been raised by the member for Ottawa West regarding the involvement of the Ontario Municipal Board in hearing appeals from the proposed legislation. I was pointing out at the time that the Ontario Municipal Board is well equipped to handle these kinds of appeals due to its expertise and the fact that the process is less costly and less time-consuming than appeals to the court would be.

Mr Chiarelli mentioned that the current chair of the OMB, Mr Kruger, is an experienced bureaucrat. You may recall from yesterday's discussion that Mr Kruger appeared before the standing committee on government agencies last January 22. At that time, he acknowledged that the OMB did have a backlog of appeals, but he was taking positive, affirmative steps to deal with that backlog. Three of the procedures Mr Kruger was implementing were as follows: (1) case management; (2) pre-hearing conferences would be resorted to with greater frequency, and (3) the board was studying the possibility of implementing alternative dispute resolution and mediation techniques as alternatives to formal hearings.

I would just like to conclude my remarks very briefly by indicating the success with which Mr Kruger is currently meeting these objectives. First of all, I have here the 85th annual report of the OMB, covering the fiscal year April 1, 1990, to March 31, 1991. On page 8 of that report, the number and kind of appeals the OMB received in 1991 are set out. I note with interest that in many cases the number of appeals the OMB has before it is down substantially from what it was in the 1989-90 fiscal period. For example, assessment appeals, which comprise a large pro-

portion of appeals heard by the OMB, are down from 731 appeals the year previous to 719 appeals in 1990-91. Similarly, zoning bylaw appeals/approvals are down from 749 appeals in 1989-90 to 694 in this past fiscal year. The same can be said of minor variance appeals, consent appeals, official plan appeals, plans of subdivision and consolidated hearings, all of which are down substantially from the previous year.

To the members on the opposite side who indicate that the OMB is ill-equipped, given its backlog, to handle appeals under this proposed legislation, certainly there is no basis for that.

I would go on to say that in the past fiscal year, the hearings division of the OMB scheduled 2,593 hearings involving 4,091 files, but the number of actual hearings was only 1,962 involving 3,146 files, simply because a number of the hearings resulted either in adjournments or withdrawals. So there is not an unmanageable number of appeals coming before the OMB such that the OMB, with its resources, its expertise and its experience would not be able to deal with them.

It has been noted that the OMB hears a multitude of appeals under at least 75 public acts and, additionally, 100 private acts. So in terms of the percentage of volume of work that would be created by Sunday shopping, the proposed legislation and the appeal route would not constitute a significant number of appeals, considering the vast volume of appeals the OMB deals with in any given fiscal period, everything from the Aggregate Resources Act right down to the Trustee Act and all the letters of the alphabet in between. It has a very wide mandate, and the kind of Sunday shopping appeals that might be expected to flow from the proposed legislation would not be so cumbersome that the OMB could not handle them.

I would also indicate that there are some extremely experienced people on the OMB. As you may know, there are approximately 30 members. These members are largely lawyers, but also chartered accountants, planners, architects and economists. Some of them have as much as 23 years of experience. Here is one even higher, Mr Colbourne, who has served for 31 years. That is just an example of the length of tenure—17 years, 23 years, 22 years, 31 years. These are people who bring to their task a long and distinguished period of service. Certainly these are people who are well-equipped to hear the kind of appeals we would expect to flow out of the act, to hear them expeditiously and in a manner that will not create the kinds of delays that might have been experienced by the board in the past.

Mr Kruger also alluded to his plan to use more pre-hearing conferences. As I mentioned yesterday, pre-hearing conferences are a fundamental way of narrowing the issues, perhaps eliminating some of the issues, bringing people

together and resolving the issues without having a protracted, formal hearing. This is certainly a way of managing the case load, and Mr Kruger has indicated that he intends to resort more and more to pre-hearing conferences.

It is a pity that the member for Ottawa West cannot be here today because he did spend a lot of time referring to the work his committee—this committee, actually—did on alternative dispute resolution and the report of this committee that was published in June 1990 when Mr Chiarelli was Chair. I note with some interest that in its conclusion, the report indicates that alternative dispute resolution is still in its infancy in this province and there is a great deal more work to be done in the area and precisely because alternative dispute resolution is in the early stages of development that the committee considered its study and its report to be only a first step, yet the member for Ottawa West, now sitting on this committee again, asks why we have not put a provision for alternative dispute resolution in this bill. He should be mindful of the fact that his own report indicated this concept is still in its infancy.

Surely it ill behooves Mr Chiarelli to hold up this important piece of legislation merely because he thinks this might be a good test situation for alternative dispute resolution. Mr Kruger has indicated that he wants to implement alternative dispute resolution. There may be nothing preventing that for Mr Kruger, but it would certainly not be in the interests of the Ontario public to hold up this vital piece of legislation to experiment with alternative dispute resolution, however compelling that alternative may be.

One might also ask, is alternative dispute resolution appropriate here as it would be as an alternative to judicial proceedings? Donald Steele, now a justice of the Ontario Court (General Division), said in a paper: "It has been held by the courts that there is no such thing as a lease or an action in that sense before the municipal board. It is an administrative tribunal and not a court. For this reason, there are not really parties to an application nor is there specifically an onus of proof upon any individual on either side."

If you do not have parties in the strict sense of the word, do you really have an appropriate forum to use alternative dispute resolution? I am not convinced one way or the other, but I throw that out for the consideration of this committee. Perhaps this is not the best place to start with alternative dispute resolution. Perhaps there might be more appropriate arenas in which to test it out, as suggested by the fine report tabled by Mr Chiarelli.

1550

In conclusion, I would suggest that there has to be an appeal route. We cannot simply allow municipalities to be the final arbiter. There has to be some way of ensuring that when a municipality does pass a bylaw permitting Sunday openings there is compliance both with the spirit and letter of the province-wide tourist criteria. What better route to appeal than the OMB, which already exists, which already hears municipal appeals of this nature, which has the staff, the expertise, the training and is an appropriate forum in which to hear such appeals?

In fact, there may be cases where a member of the OMB is going into a particular locality to deal with an

assessment appeal or an affordable housing appeal or an appeal from an official plan where the two could be combined. There might be an outstanding appeal from the proposed legislation and it would make perfect sense and be expedient that one person hear both appeals in that situation. The OMB is that flexible that it can do that.

I would suggest then that the OMB is cheaper and faster than the courts and it has the expertise. This three-month time line for the hearing of appeals ensures that they will be dealt with in a timely and an expeditious fashion, and that the OMB will use its best efforts to ensure that this kind of timeliness is observed. With that I will yield the floor.

**Mr Poirier:** If Guy Lombardo was still alive today, he would gladly play some kind of elevator music to the background of that claim, David.

**Mr Mills:** You are showing your age, Jean.

**Mr Poirier:** Yes sir, you are damn right I am showing my age. When you have been a member for seven years, everything you say—with all due respect to the OMB, it is not quick. It is efficient, I guess, but anybody can be efficient over a hell of a long time. Maybe you are a lawyer. Like I told you before, lawyers are just going to be happier than hell that you are going to send this to the OMB. What they are not going to make with the car insurance thing, they are going to make at the OMB. Thank you NDP, if I were a lawyer, with all due respect.

Do you know what is frustrating about the OMB? You have not been here long enough, but you will find out that it is as bloody slow as you can get, it is already bogged down, and now for the good news: You are going to add to the bogging down. The frustrating part as a member is that you cannot get your little nose in there, you know that, because it is a tribunal. People will come and see you as the MPP: "You're the guys who pushed this on to the OMB. Do something for me; it's getting bogged down," and you will not be able to go there because you are an MPP.

A lot of people do not realize that MPPs cannot get involved with the OMB, but we cannot, believe me. A lot of people do not know that, and you guys can answer your constituents who are going to come and see you and say: "Help me. I've got a delay; I've got cobwebs on my dossier. The archives in Canada want to consider my dossier, it's damn old, it's been in front of the OMB for so long."

You guys are telling me that you are going to make this an express lane at the OMB? What do you think this is, a Mac's Milk of municipal affairs? It is not an express lane and you are going to add on to the bloody load, no matter what you are going to add up to it. I am appalled that you are going to overload the OMB. You should have lightened the load of the OMB, not what is going to happen. Oh, my God. Some more overload with the OMB.

I guess you are in good faith. I do not pretend you are not in good faith, but you just do not know what the hell is happening out there. This is going to create quite a ruckus and, like I told you, it is going to add to the bureaucracy, to the overload of all the systems and it is not going to resolve



what you think it is going to resolve. It will not. It will add on to it, David.

I know what you are going to tell me six months or a year from now. "You're right, man"—you can tell that to me in private—"this is really bogging things down." The wheels are just not going to turn any more. I do not give a darn what anybody else inside may have told you at the OMB; this just adds on to it. No amount of money that you, as a government, could give to the OMB to add on to its capacity is going to work.

This motion is the best example I could ever use, if I ever wanted to use one example of how a government can grind things down unknowingly. I think you are in good faith—unknowingly, I say. I cannot imagine that you would have knowingly bogged things down.

**Mr Sorbara:** Give them a little more credit.

**Mr Poirier:** Let's give them a little more credit. Unknowingly bog things down. This motion is going to be a monument on how to bog things down in red tape, bureaucracy, delays, frustration, and you will be caught in the middle as an MPP and unable to do a darn thing about it because you cannot go and put your little nose in at the OMB, because the bear trap is going to spring on your nose if you try to go to the OMB with something like that, with what one of your constituents has.

You are going to get a lot of zealots, ayatollahs, who will put their fingers in the OMB pie trying to stop things, for whatever reason. If I were a municipal politician it sure would be interesting to see this. Of course it is a provincial bill; of course it is a provincial motion; of course it is a provincial condition, but you will have succeeded in bogging down mine and your current and future dossiers away from this bill and further into the OMMB—the OMB. The Ontario Milk Marketing Board and Ontario Municipal Board—there is one "M" extra here.

**Mr Sorbara:** They are milking the system.

**Mr Poirier:** They are milking the system for sure. I know so well what you guys will tell me in private a year from now. "My God, we were in good faith but we had not realized what a hell of a mess we instituted by this one motion."

I want to put that on the record. I know, you got your marching orders, fair enough. I know you are in good faith, but I want this as a hard copy to distribute to you when you will come to see me a year from now with your long face and say, "Hey, wow, did we goof up on this one." I will give this copy to you in private a year from now. I will not embarrass you too much. I like you guys in private, but you are really screwing up with this one, believe me.

**The Chair:** Further debate on the Liberal motion. Mr Sorbara.

**Mr Sorbara:** Just to correct you, sir. It is not the Liberal motion, it is the government motion. It is a motion that is probably the single most significant mistake that the government has made since it introduced this bill.

We are moving through to the completion of clause-by-clause consideration. If the government had been listening even up to today, it would be announcing at this point that

it was supporting the amendment that is on the table and that we will be proposing towards the end of these hearings to allow the discount drugstore market to continue to survive in Ontario.

We put a leader to the Solicitor General during question period today. He obfuscated, he avoided the issue, he pretended that the problem arose under the Liberal government, and he refused to acknowledge that, lo and behold, he happens to be the minister and he has the power. "The minister could be a hero," to quote the member for Nipigon when he was in opposition. This minister, sitting here, could be a hero with some 3,000 people who are looking to him for a little bit of justice in a very small amendment that will allow for even and fair and just competition.

As we are looking at this OMB amendment, I hope the minister is thinking about stepping out of the room and sitting down with the people from the discount drugstores and their employees to at least discuss the possibility that before we finish we can clean up that little bit of injustice that exists in the bill as it is now presented.

I am here to speak about amendment 13 that is before us. I spoke at some length about this amendment when it was proposed and tabled before the committee. I just want to reiterate now what I said then.

1600

All of the things Mr Chiarelli said and Mr Poirier has said are accurate reflection of the mischief that this amendment will create. What is worse, sir, is that two things will happen as a result of this amendment. Individuals who are aggrieved, nosy busybodies who do not like the idea that Gord Mills's little tourist shop got an exemption and is going to be open on Sunday, will have the power to harass Gord Mills and his little tourist shop.

**Mr Poirier:** And they will.

**Mr Sorbara:** Instead of the decision of the council being the decision that the community should live with, some busybody from down the street will be able to go to the OMB and apply for an appeal, and that appeal has to be heard.

Sure the OMB will try to expedite. Two years down the road maybe there will be a final decision, but do you know what? Gord Mills's little tourist shop is going to be closed by then, because at the profit margins that Gord Mills can make in this economy and in most economies, he does not have the money to pay the lawyers to handle that appeal. Agreed that Mr Mills wants to open his store on Sunday under the narrow exemptions that this government provides, he will not get a chance, because you provide a legal hassle, a little mischievous tool to anyone.

There is not even any qualification. The amendment you are going to pass is, any person who objects. So there is Derek Ferguson, the member for Guelph—

**Mr Fletcher:** Fletcher. Get it right.

**Mr Sorbara:** Fletcher. Some day he will make an impact on the Legislature and I will learn his name.

There is Derek Fletcher, the member for Guelph, and he hears about some little newsstand that happened to get an exemption over in Niagara. Do you know what, Mr Chairman? Derek Fletcher and Derek Ferguson can both

hassle that storekeeper through months and months of litigation.

There is one more point I want to make, and I hope my friends in the government caucus listen to this. This amendment is terribly unfair and, I would submit to you, violates the Charter of Rights and Freedoms, because it does not give both parties equal access to the system for appeal and the appeal mechanism being proposed here.

On the one hand, if that busybody from Guelph decides that he wants to launch an appeal, a bylaw having been granted, he has every right to do that. It says, "Any person who objects to a bylaw made by a council to allow Sunday openings." Any person can object, can appeal, if the council says yes. But what about the council that says no to Gord Mills's little tourist shop? I tell my friend Mr Mills that this amendment does not give that shopkeeper the same right of appeal to a decision by a council denying the right to operate on Sunday under the tourism exemption.

The New Democratic Party is the party that preaches fairness and equity and equality and justice on all sides, so if you give it to one, you should give it to the other. Why was this drafted like this? I know why it was drafted like this: because the New Democratic Party was a little bit worried about the flak it was getting from the United Food and Commercial Workers International Union. Notice they do not come any more. Pearl MacKay has left us.

**Interjection:** Yvonne is here.

**Mr Sorbara:** Yvonne is here, I am sorry. She did not come to all of the hearings.

This amendment happens to be the United Food and Commercial Workers International Union amendment, taken almost word for word. You see, the United Food and Commercial Workers International Union is not interested in giving the shopkeeper the same right of appeal, but surely those members of the government caucus, having been elected under a party banner, have a greater responsibility to think of the public interest. The public interest requires and demands that if you give the right of appeal to the losing party, you would give the same right of appeal to the other party, if the other party loses.

Any person who objects to an opening allowed by a municipal council, and that is every single member of the United Food and Commercial Workers International Union, or any other busybody who is aggrieved at the fact that a storekeeper gets the right to open on Sunday, has the right to appeal, except the shopkeeper. I cannot believe it. I cannot believe that you would not say: "Well, we want to give an equal right of appeal. We believe in fairness and justice."

I would invite a government caucus member to explain that to me. If I could get a reasonable explanation for that, all the work and all the debate that has gone on here would, in some respects, be worthwhile. Tell me, convince me that the storekeeper who does not get a bylaw ought not to have the right of appeal. It does not make sense. It is hurtful. It is harmful. It is unjust. It is inequitable. It would not take too much to add to this amendment a phrase like, "and any retailer who is denied a bylaw by a local council also has the right of appeal."

That does not mean he or she is going to win at the Ontario Municipal Board, it just means that he/she has the same rights that the other side has. It seems fair, it seems just, and I cannot understand why you did not put it in this piece of legislation.

I hope Mr Mills, who is the parliamentary assistant, or the Solicitor General, who should not be here, but should be meeting with the discount drugstore owners, or someone—I invite anyone in the room except you, Mr Chairman, who has the responsibility of maintaining a neutrality and order here—will explain to me why this is fair, giving one side the right to appeal, but not the other. It is like saying that if the crown convicts you of a criminal offence you do not have the right to appeal, but if the crown is not successful in the conviction and you are acquitted, then the crown has the right of appeal.

Would that be a fair justice system? You go to court and you win and the crown can appeal, but you go to court and you lose and you cannot appeal. What kind of justice is that? It is not the kind of justice I would be proud of if I were a government member on this committee.

**The Chair:** Are you finished?

**Mr Sorbara:** I am done.

**Mr Mills:** I would like to make a comment to set the record straight just in case the Conflict of Interest Commissioner happens to read Hansard.

**Mr Sorbara:** You do not have a store?

**Mr Mills:** Yes. I would not want him to have some sort of conniptions about something that I had not declared. I do not have a store, and your store is merely used in a hypothetical vein. I appreciate that, but I would just like it on the record.

**Mr Sorbara:** I want to note for the record that notwithstanding my invitation to a government member or the parliamentary assistant or the Solicitor General to explain why this inequity should appear in this amendment, there was no response. Let's vote. I move the question.

The committee divided on Mr Mills's motion, which was agreed to on the following vote:

**Ayes—5**

Carter, Fletcher, Mathysen, Mills, Morrow.

**Nays—2**

Poirier, Sorbara.

**Mr Sorbara:** Can we go back to 9?

**The Chair:** Yes, now we will be going back to 9, which we stood down yesterday.

**Mr Carr:** Did we stand down 1 and 2?

**The Chair:** Yes. We just stood down 9 and 10 until Mr Sorbara came back. Yes, 1 and 2 are still stood down.

Mr Sorbara moves that subsection 4(4) of the act, as set out in subsection 1(1) of the bill, be amended by adding after "on" in the third line "or proposing to carry on."

**Mr Sorbara:** This is an amendment that I think is of a highly technical nature, and yet would add substantively to the bill we are considering. I do not know really how to do this in a way that will be effective. I really beg the attention



of the government members on this, because I think there is a possibility that you might be willing to support this amendment.

1610

**Mr Mills:** I do not think so.

**Mr Sorbara:** May I just explain what this amendment will do?

**Mr Poirier:** Listen, Gord; he has a good point.

**Mr Sorbara:** The way the bill is now structured, it is necessary that an individual or a corporate entity be carrying on business at the time an application to a council is brought for a tourist exemption.

We heard during our hearings in Peterborough I think one of the most effective submissions I heard during the course of the hearings. It was not politics. It was not involved really in the debate about whether there should be Sunday shopping. In fact, it was totally devoid of the kind of rhetoric that all of us understand in this debate and many of us, including myself, indulge ourselves in as part of the exercise, I guess.

**Mr Poirier:** It was not politics; it was common sense.

**Mr Sorbara:** As my friend Mr Poirier says, it was simply common sense. The thrust of the argument goes like this. If an individual is contemplating carrying on a business in a locality that is not designated as a tourist area, it may be crucial to that individual to know whether he or she is going to be able to carry on business on Sunday.

That will have an impact on things like the very decision to enter into a lease or enter into the purchase of the property. It may have something to do with how much rent a storekeeper is willing to pay to rent premises to carry on business. It may have something to do with the way in which he or she designs a marketing strategy. If, for example, that proposed shopkeeper realizes that most of the people come to that locality in the community on Sundays, then he would have to know whether he was going to be the beneficiary of an exemption before he undertook to carry on the business.

Regrettably, and I think mistakenly, this legislation requires that he first open the business and run the business before he can apply for an exemption.

I know that in most cases applications are going to be made by entities that are already carrying on business, there is no doubt about that, but the marketplace is an organic, dynamic kind of entity. It changes. Storekeepers go out of business. New entrepreneurs decide they want to try their hand in the marketplace, and in some instances they will need to know.

The submission we heard from the people from Belleville was indeed much larger, because they were developers. They were going to build an entire shopping block which was designed specifically to cater to the Sunday traffic: the boaters and the tourists who come in the summertime to the community of Belleville.

**Mr Poirier:** In a tourist area.

**Mr Sorbara:** In a tourist area. They said to us, "We can't sign leases with our tenants unless we can tell them

the ground rules," and to them an important ground rule is whether they are going to be able to open on Sunday. That is going to make a difference as to whether this project goes ahead.

I recall, when we heard those submissions, every one of us on the committee was nodding in agreement. Every one of us realized that in that kind of instance, yes, someone should be able to make an application before he carries on business.

Mr Mills used to sit on a city council. So did the Solicitor General. He will know that sometimes, in an application for a zoning change or an official plan amendment, a transaction is conditional upon receiving the appropriate zoning.

This authority to operate under the tourist exemption is very much like an amendment to a zoning bylaw. If you cannot make an application, if your application is a nullity until you have opened the business, there is no acknowledgement of the way businesses emerge and develop and finally open their doors.

I plead with this committee, not because it will do me or my party any good or there are any politics in this at all. I just plead in this one instance that we set aside what the cabinet submission said and, for our shopkeepers and those entrepreneurs who might be thinking about going into business, use a little bit of common sense here.

It will not be a headline. No one will have his chairmanship of a committee taken away. No one will write about this, except that when we leave here tonight, if we pass this, we will all realize that we have done something right. I direct my comments to the Solicitor General for a moment. I say to him, "Just give them the nod that this is okay." Bob Rae, Chuck Rachlis—what is his name?—Ross McClellan, none of them will even know. I am sorry to mention it, but they will not.

I have been in your position. I have sat on a committee as a minister, and when a good amendment was raised in a committee by an opposition member that did not have any politics to do with it and I felt, having consulted with my advisers, that it would just make the bill a little bit better, I have given that nod. Giving that nod will not make very much of an impact for most of the world, but all of us could just use this as a clear example of how we have worked together to make the bill better.

My friend is shaking his head. I do not know if he means that I should stop talking, but I am going to stop talking on this. I have pitched everyone on the committee whom I thought was willing to listen about this. I have talked to Chuck Rachlis about it and he said to me in the hallway, in the basement of this building, "It sounds reasonable to me, Greg."

There are no politics in it. It just allows for the normal municipal approval process to unfold in a way that makes it work. I do not like the tourism exemption. I think it should be broader, but if there is to be a tourism exemption, then in some instances some people will have to make an application before they open the business. It is life and death. That does not mean the council cannot say no. The council can say no and that is fine; that is what the law provides.

Look at just one other little bit of unfairness in this. Take an applicant who has leased a store on a street already designated a tourist area, say Bathurst Street from St Clair to Bloor in Toronto. Under those circumstances, anyone who rented a store in that area, no matter what he was selling, would be the beneficiary of the exemption. So they have the ability to know that before they rent the store.

We are just arguing for those unique situations where the physical building itself is not in a designated tourist area and yet the storekeeper must know whether he can open on Sunday before he signs the lease. I think it is only fair and only reasonable that we do that. No one will criticize any of us for making this small improvement and I plead with the committee members to support it.

**Mr Carr:** I will be supporting this particular amendment because I suspect that what happens when pieces of legislation are drawn up is that numerous situations can arise that a lot of people have not thought of. I think this may be a classic case of one that was not thought of when it was initially brought up.

The committee has heard about two cases of this kind. There was the chap from Belleville who did an excellent presentation in Peterborough. There was also a group that came before us, I believe in London, looking at the same type of situation in Niagara Falls, where they were proposing to put together a very large complex. One of the questions they were concerned about was whether they would be able to open on Sunday. What they said was that the jobs and investments will depend on whether a particular area gets a tourism exemption. I understand in the case of Niagara Falls the municipality has in the past opted to open and would like to do so in the future. However, we will now have a situation where, as crazy as it sounds, the municipality says, "Yes, it will be a tourist area," but this particular new development will have to go back again before council and open up the same debate.

1620

The amendment proposes a commonsense approach. If a municipality decides to open, I do not think they should discriminate against groups that may be in the process of building. I think if this amendment does not go through, some of the investment decisions that will be made in just those two areas—and they were the only two that we heard about, there may be more—will be on this government's shoulders.

It was similar to where one of the groups said, "We want to be constructive and practical, so we offered to open just prior to Christmas." I believe this is the same type of circumstance. In both Belleville and Niagara Falls they are facing the major problem of cross-border shopping. That is why Niagara Falls has opted to declare itself a tourist area. This amendment will ensure that the Niagara Falls investment can go ahead. They need to know very quickly, because a lot of the investment decisions being made are based on the people who have already committed. They found it very difficult to go to people and say, "Would you like to open a shoe store in the new mall we're thinking of putting together?" because they did not know whether this would pass.

So hopefully some common sense will come into this and this amendment will pass. I hope so, because it would show that input does count, rather than listening to a few selected groups that traditionally have always had their say before committees. It would be interesting to see a couple of private groups listened to. It is something I suspect all of us had considered when it came through. There is no reason we should not proceed with this, so I will be supporting it, Mr Chair.

**Mr Mills:** Of course, I cannot support this amendment, although I listened intently to what my colleague has said, which in some areas and to some degree I must say makes one think about it. But, having said that, one must understand that what you are proposing is very speculative. What it will encourage is speculation and that speculation would not fly with the intent of this bill.

**Mr Sorbara:** It will not encourage speculation because it says "proposing to carry on a business."

**The Chair:** Mr Sorbara, Mr Mills has the floor.

**Mr Mills:** To further the speculation, it does give a degree of uncertainty, in my opinion. Having sat on a municipal council for a number of years, I can understand that if this amendment was introduced and a council gave the okay to a project which subsequently did not meet what the original plan was, the council would be under tremendous pressure. Such was the case on the deal in Belleville, when there was so much money laid out. How could you not be persuaded by the impact of the amount of money involved to bend a little bit on your stand on the criteria for tourism? I would think that you are very vulnerable to that.

**Mr Sorbara:** What do you do when somebody violates a zoning bylaw, Gord?

**The Chair:** Mr Sorbara, you will have your opportunity later.

**Mr Mills:** To conclude my thoughts, how do we protect the municipal councils when this happens? I can see that we would have to write in some further legislation to protect the councils who are caught in this bind. When you have already given the green light and they go ahead and subsequently do not comply with the intent of the bill, then you are in one dickens of a bind to get out of it, and that is going to cost money. So I think that given the atmosphere of speculation and uncertainty, I cannot support the amendment because it would really be detrimental to the intent of this bill.

**Mr Poirier:** Mr Chair, can I get the parliamentary assistant to listen to my proposal? I see where he is coming from.

Imagine me, I am a businessman in Belleville. Mr Sorbara is also a businessman in Belleville. I have an existing development, he has got a proposed development. You have sat on a city council, as others have, and we know that a lot of city councils pass a lot of bylaws for a lot of different reasons. People come to council with an existing business, fill out a form saying this is what they want to do, and council passes a bylaw to authorize it, only to find out, upon some information in a brown envelope under the door or through their own inspectors finding out,



that the existing business is not what they thought they approved in the bylaw. Council is then faced with wondering what to do and how to react.

You know as well as I do that the members of a lot of municipal councils, even sometimes behind closed doors, scratch their heads and wonder, "What do we do with that?" You and I know that, faced with an existing business, a lot of municipalities tend to shut an eye and let it go through and thus of course create a dangerous precedent. You and I know that some municipalities really hit them over the head with the law, while others choose to turn a blind eye.

Now take the case of a proposed business. The owner comes to the municipality with a written legal document—not a verbal presentation—the same type of document I would have to bring if I were an existing business, saying exactly what he will be doing, how, when, where, the five Ws. The only difference is the "when." His date would be different from mine. It is the only darn difference.

I could fool you, the members of the municipal council, and you would then have to worry about what to do with me. He could fool you. But you would have a mandate, as municipal politicians, to follow through, because you could give me an approval, a bylaw for an existing business; you would give him a bylaw for a proposed business. If I defaulted, if I was erroneous, especially on purpose, you would have a legal option to whack me over the head. If he did the same thing with his proposed project, you would have no less a mandate to hit him or her, the only difference being that you might hit him at a different time than you would hit me. Gord, there is no difference.

You have legal recourse because the bylaw you would give me as an existing business or him as a proposed business is based on a legal document, based on a legal document that he and I would have to submit to you, that you would have in your possession, that you would be able to consult. If you noticed something erroneous, you would have legal recourse to whack us over the head.

We know that some municipalities do not do their work. They ignore violations of existing bylaws. It happens all the time in Ontario. Do not come and tell me that you are worried that the municipality might not do it later on. A whole bunch of them are not doing it today. There is no difference, Gord.

For God's sake, in the name of future development in Ontario, in the name of those 3,000 jobs in the large discount pharmacies, you do not want to be part of any amendment involving five words that do not change a darn thing you want to do. It just permits those people with proposed projects to submit to you the same type of legal document submitted by those with existing projects. You will not mess up the responsibility of the local politicians any more or less than you have to do when dealing with existing projects, not a damn bit more.

1630

How can you say: "No, we're not going to consider your proposed businesses. Existing businesses are creating jobs today, but you are proposing to create jobs in Ontario later on. Just try to lease whatever you build"? Would you want to lease in circumstances where you do not know

whether you can open on Sunday or whether you are going to be designated for a tourism exemption? None of you would lease if you did not know what the hell you were getting into and I would not blame you. You have got to be crazy.

With what is happening to Ontario's economy, you cannot take those kinds of chances. You need to know from the project owner, who needs to know from the municipal government, what the chances are of opening next year, six months or 18 months down the road. If he is going to invest, not \$3.49 but millions of dollars, he may be crazy, but he is not so crazy as to invest that kind of money if he cannot get the green light on whether the project will be designated touristic. People are not going to lease from him, Gord. You know that.

There is no difference between an existing and a proposed business in this matter, and you darn well know it. If a municipality fails to deal with businesses which break the law, it makes no difference it is an existing business which breaks the law now and is not dealt with now, or whether it is a proposed business which breaks the law six months from now and is not dealt with six months from now. In both cases, the same legal documents mandate the municipality to hit business over the head, whether now or later. And you know it.

This does not change anything you want to do with your law.

**Mr Sorbara:** I am afraid we are losing this one. I know the ones we were going to lose right from the beginning. The fix was in. We were not going to get economic development as a criteria, we were not going to get expansion of parameters, but I thought we were going to win this one. I really thought we were going to win it. I thought we would convince you.

**Mr Poirier:** It makes so much sense, damn it.

**Mr Sorbara:** The reasons that my friend the member for Durham East gave are so devoid of rationality, are so lacking in substance as to be an embarrassment to Parliament or to one of its committees. We are not here to make life easy for municipal councillors. We get elected because there are difficult decisions to be made about the way in which our society runs. There is no speculation involved here.

The amendment says that someone proposing to carry on a business has to go to the council and say, "I propose to carry on the business of selling hot dogs and hamburgers or whatever to sailors or whomever." He has been a municipal councillor. He knows that the granting of a bylaw will have all sorts of conditions attached. He also knows that when an existing business gets an exemption, that does not mean that a business that does not sell rugs today could not sell rugs tomorrow, even if you did not contemplate that. Sometimes you have to enforce your by-laws. That is what we are elected for.

I really thought we were going to win this one. It is the one I wanted to win because I am a lawyer and I have some small sense of how businesses are seeded and germinate, grow and develop. I guess I believed the Premier

when he said, "We want to do those things which will allow business to begin to thrive in Ontario once again."

This amendment is so minor, so devoid of politics, so inconsequential to whether you get elected next time or you do not get elected. It is common sense brought to us by people of the province who said, "We welcome you to carry on your debate on Sunday shopping. We bring you an amendment that is eminently reasonable and allows business to carry on in a normal way."

I thought we were going to win this one. I thought I had the ability to make arguments, both in this room and in the corridors of power, with Chuck Rachlis, the Solicitor General, his counsel and the members of this committee and, here and there, to try to take the politics out of it.

I think I would have traded something for it, in fact. I would have said, "Okay, we'll ease up a little bit." I felt that strongly about it. I am so bloody naïve in this business still. I believe that people will come here and make fair and reasonable decisions and will not be totally in the grip of one leader or one job or one assignment. We will see about that when we vote on this.

Let's have a recorded vote. Are any of the NDP members going to leave the room so we can win this? You will not be voting against it. I invite you to do it now.

The committee divided on Mr Sorbara's motion, which was negated on the following vote:

#### Ayes-3

Carr, Poirier, Sorbara.

#### Nays-6

Carter, Fletcher, Mathysen, Mills, Morrow, Winner.

**The Chair:** Mr Sorbara moves a 10-minute adjournment.

Motion negated.

**The Chair:** Let's move on to the Liberal motion on page 10.

Mr Sorbara moves that section 4 of the act, as set out in subsection 1(1) of the bill, be amended by adding the following subsection:

"(5.1) The council of a district, metropolitan or regional municipality and the council of the county of Oxford may also consider and pass a bylaw under subsection (1) on its own initiative."

**Mr Sorbara:** There is a defect in this bill. The defect is this: The bill only allows applications to come before council that arise from businesses or from an association of one or more persons carrying on a retail business that is like a shopping district. I believe that it would improve this bill if the council itself, notwithstanding that there are no active applications, be able to identify a tourist area and, without an application arising by a business or by a group of businesses, that the council have the authority to pass a bylaw on its own initiative. That is what the amendment stands for.

**Mr Carr:** I wanted to say very briefly that I will be supporting this motion. On the one hand, the government of the day is saying it is going to let municipalities make

the decisions; on the other hand, it wants to involve some other people in the process.

If a municipality is going to make a decision one way or the other, I think it would help the process and speed it up a little bit if it is allowed to do that. This particular motion is one that I think will add to it, so I will be supporting it.

**The Chair:** Seeing no further debate, all those in favour—

**Mr Sorbara:** A 20-minute bell please. If we cannot get a 10-minute adjournment, we will have a 20-minute bell.

**Mr Fletcher:** What time do we come back?

**The Chair:** One minute to 5.

The committee recessed at 1639.

1700

**The Chair:** I call this meeting back to order. On the Liberal motion, page 10: All those in favour?

**Mr Poirier:** A recorded vote.

The committee divided on Mr Sorbara's motion, which was negated on the following vote:

#### Ayes-3

Carr, Poirier, Sorbara.

#### Nays-6

Carter, Fletcher, Mathysen, Mills, Morrow, Winner.

**The Chair:** We will now go to the Liberal motion on page 12 which was stood down yesterday.

Mr Sorbara moves that subsection 4(7) of the act, as set out in subsection 1(1) of the bill, be struck out.

**Mr Sorbara:** Just like the poor Atlanta Braves, struck out. Just to explain the purpose of the motion, I will read subsection 4(7) to you. It says, "The council is not required to pass the bylaw even if the tourism criteria are met." What a silly little piece of nonsense that is. That means that Gord Mills in his little shop could not apply before he opened up the store, when he was proposing to open up a store, and we have just dealt with that, regrettably. So now he opens up the store and the council says to him: "Don't worry, open up your business. You meet the tourist criteria. Come to us; you'll get the bylaw." He knows he meets the tourist criteria because the store down the street, which is selling the very same things on Sunday, is a tourist shop, and he is just opening up in competition.

He knows he meets the criteria. His council knows he meets the criteria. They go to the council and they make the arguments. Every councillor in the municipality says, "Yes, you've met the criteria." Then the mayor, or whoever it is who calls the vote at the city council, says, "All those in favour of this bylaw?" and no one puts up his or her hand. Then the clerk says, "All those opposed to the bylaw?" and everyone puts up their hands, and he says: "What happened?" Why suddenly did I lose? I met the tourist criteria."

We have in this law an absolutely arbitrary authority of the municipal council to refuse, notwithstanding that the tourist criteria are met. Honest to God, my friends, I do not



understand that. I do not contemplate why you would want to put that arbitrary power in the hands of a municipal council.

Do you know what? Here again I refer back to the amendment on the appeal to the Ontario Municipal Board. This poor sucker has not even the right to appeal to the OMB. If the bylaw were passed, some aggrieved party like the member for Welland-Thorold who wants all the stores to close could appeal.

In my example this shopkeeper has met the tourist criteria. He only sells tourist goods. That is it; that is all. He has a competitor and he thinks he can enter the market. He makes the arguments; the arguments are successful. Everyone agrees that the tourist criteria are met. And you are saying in this bill that the council can just say no. Is that not a recipe for fairness? Is that not the way we want to do business?

It is like setting out the provisions to get a building permit. You have met all the requirements. You have the architect to draw the blueprints; they have been approved by engineers. The zoning bylaw allows you to build the building. You go to the council and say: "Here it all is. It's all there before you. I've done all the work. The engineers are ready." Can the council say, "Well, sorry, you can't build it; no building permit"? "Well, why?" "Oh, we don't know why, just no. We have the authority to just say no."

Do you really want that in this bill? Do you really want shopkeepers not to have any certainty about whether or not they are going to get a bylaw? Do you want that? Is that what you really want? Do you think that is going to be fair?

Imagine the situation of a shopkeeper who hires a lawyer to make an application for the granting of a bylaw for a tourism exemption. The shopkeeper will say to the lawyer, "Do you think I'm going to be able to get this bylaw to allow me to open on Sunday?"

The lawyer is going to have to say two things: "I believe you meet all the tourist criteria as set out in the regulations. Your clientele is basically coming over on Sunday from Buffalo or from Tonawanda to Niagara-on-the-Lake to go to the theatre and to do a little shopping, and you sell the kind of handicrafts that appeal to tourists, so you meet those criteria. You're even in a kind of historic building. So you've met all the criteria. But you know what?" the lawyer will say to his client. "I have no idea whether or not you're going to get a bylaw," because the law will say, unless we change this, the council is not required to pass the bylaw, even if the tourism criteria are met.

**Mr Mills:** Common sense.

**Mr Sorbara:** On what basis does the council make a decision then? How they feel that night? Whether or not Gerald Vandezande is in the room? Whether or not they are the victims of some lobbying from the United Food and Commercial Workers Union? On what criteria? There are no criteria in the law. They can just say no. Maybe that storekeeper has not voted for the right mayoralty candidate.

**Mr Mills:** Oh, come on.

**Mr Sorbara:** Listen, I say to my friend from Durham East, there are no criteria. You are giving the council the authority to say no without any basis in law or fact at all. That is arbitrary and that is unfair. You cannot pass it like this, Gord. You need some criteria to say, "Yes, you've dealt with that."

You say that a special committee is going to develop tourism criteria. That is okay; that is right. So long as you have a tourism exemption, you need those kinds of criteria, but surely to God you need criteria as well to say no if you have met the tourism criteria as set out in the regulations.

Will someone here, perhaps the member for Welland-Thorold, express to me, make the arguments that this is fair, that this is just?

**Mr Mills:** I will.

**Mr Sorbara:** I am looking forward to hearing that, because the last time you tried to do it I think you embarrassed us all. I really do.

**Mr Mills:** Oh, come on. That is your opinion.

**Mr Sorbara:** It is my opinion.

**Mr Winninger:** He did not embarrass me at all.

**Mr Sorbara:** He embarrassed me. I do not have a set of criteria upon which the local council should base a decision to say no, notwithstanding that the tourism criteria are met. You are not proposing to put it in. So why do you want to give them the absolute authority to say no?

If you say to your children, "Look, so long as you've got your homework done, and so long as you've cleaned up your room, and so long as you've done your chores outside, you can go out to a movie tonight," and then, after they have done all that, you say, "Yes, but you still can't go to the movie tonight," what are the children going to say?

This is an arbitrary authority in the hands of councils on a very delicate subject, and I think it is absolutely shocking that, notwithstanding all the hurdles you have put in the way of a shopkeeper who wants to open on Sunday, you would none the less still have a provision in the act which allows the council to say no without reasons.

I appeal to the member for Welland-Thorold, who is a lawyer, and from all accounts a rather good lawyer. He will know that under our laws, courts are required to give reasons for their decisions. It is a primary precept of administrative law. The reason that courts and administrative tribunals are allowed to give reasons is so that the applicant can understand the reason the state ruled against him or her. My friend from Welland-Thorold knows that. Certainly the member for London South, who is a lawyer as well, knows that. It is now contrary to our basic and fundamental law to make an arbitrary decision and to render a decision without reasons. Read the case books. The case books in our courts say that you have to give reasons, because that is fairness and justice. It is a basic principle of fairness in our law.

You are just about to pass a law that says you do not need any reason at all. You can meet the tourism criteria and we can say no. We can say: "Away with you, out—no bylaw, no right of appeal, no nothing. That was a very good argument, counsel. We acknowledge that you've met all the criteria. You're a tourist shop; your only customers

are tourists. They come to Niagara-on-the-Lake to shop in your store on Sunday. But you know what? You're out of luck." How in the world can you justify that?

1710

Once again I plead with you, particularly in view of the fact that you have put in the right to appeal on the part of a person who is angry about the passage of a bylaw to remove this section. I would argue that it is unfair, that it is unjust, that it is inappropriate and that it violates the fundamental law of this land. It is inappropriate to allow a quasi-judicial body, whether that is the Workers' Compensation Board or the Ontario Municipal Board or a city council, to make a decision without giving reasons. Here you invite them and you authorize them to do just that. This provision will not stand up in a court of law and it ought not to stand up in the Parliament that makes those laws which govern those courts. I plead with you to pass this amendment and strike this section.

**Mr Carr:** I will be supporting this. It is basically one word that sums this up: fairness. For a party that has always talked about fairness, it seems to me that the only reason it talks about fairness is when that serves its own interests, and they use the word not in the true sense of it, but when it means the party's position. This is the one that would make it so that a particular—if you read it, the council is not required to pass a bylaw even if the tourism criteria are met.

During the other period they talked about going to the Ontario Municipal Board, because they wanted to make sure that the decisions were open and upfront and above-board. I do not know how to paraphrase the member for London South, but he talked about wanting to have that process. Here you are now saying, "But if it is something that the council does not even want to consider, they don't have to put it on."

It is a case of fairness. Do not ever use the word "fairness" in talking about this piece of legislation if you are not prepared to pass this particular motion. I will be supporting it. I hope the members will. I am looking for some indication: Yes or no, Gord. No, I do not think so, but those are my comments.

**Mr Mills:** When I lived up in that wonderful city of Barrie north of here and represented those wonderful people on that wonderful council, we had a motto on the council: "The city is the people." That is really what this amendment is not about. The member opposite spoke about this not meaning fairness. This amendment does not mean fairness at all.

I can recall—we were on that committee—just an incident that speaks very much to this government bill in so far as that the council is not required to pass the bylaw even if the tourism criteria are met. We had, in hearings here in Toronto, a number of store owners from the Beaches. They were absolutely adamant that they wanted the Beaches to be a tourist area, open willy-nilly. Then on the other side of the coin we had the residents of the Beaches come here and speak about the congestion of the traffic in the Beaches area on Sunday, the difficulty they had getting into their homes, the parking, the types of

people who came in there who disrupted their lives, the parks—they could not get to the parks.

**Mr Sorbara:** Then put those criteria in the law, Gord.

**Mr Mills:** This is the very essence of what we as a government are saying. The council is not there to serve one business alone. It is there to serve all the people it represents. How on earth can it serve everybody if it is obligated to pass a bylaw to permit tourism in a given area when the very people who live in that area, and I give you the example of the Beaches, are adamantly opposed to that being declared a tourist area?

This is a very good example where a council in its wisdom may say: "Yes, you people, you store owners in the Beaches do meet the tourist criteria. People tend to assemble there on the weekend. It's a wonderful spot near the boardwalk, etc. But we have to recognize too the rights of the people who live here, and we are not prepared to give you that tourist criteria despite the fact that you meet all that." That I see as a very good analogy of why this particular part is there.

**Mr Winner:** I agree with Gord.

**Mr Sorbara:** I have an answer to that. I simply invite you to put that in the bill. Just add on, "The council is not required to pass a bylaw even if the tourism criteria are met where, in the opinion of the council, it is in the best interests of the community that a bylaw not be granted." But you are not putting any qualification on it at all.

**Mr Mills:** I think it is common sense, really.

**Mr Sorbara:** Gord, I am telling you right now it is not common sense. Under the law, this gives them the authority to say, "We will not grant the bylaw because we don't like you."

**Mr Mills:** I do not think that is—

**Mr Sorbara:** Yes. That is why I am saying the sentence is not finished. Put some qualification on it: "Where, in the opinion of the council, it is in the best interests of the community that the bylaw not be granted." That would be fine. Any kind of a qualifier so that the individual applicant could have reasons. That would make sense.

You do not understand, Gord, that under the law, when you give arbitrary authority, you invite arbitrary decisions. That is why we as lawmakers have the responsibility to qualify the authority of decision-making bodies. It says in the Ontario Municipal Act that reasons must be given. Decisions will be struck down if they are arbitrary unless the act gives the authority for arbitrary decisions.

I invite you to bring forward your own amendment. You always pass government amendments. Qualify the authority. Bring it in. I will stand down mine. Bring it in next Monday to put some sort of qualifier. I suggest "where, in the opinion of the council, it is in the best interests of the community that the bylaw not be granted." At least it is in the interests of the community. There is no other qualifier. You have to understand how important fairness is. I plead with you to think about this again. At the same time, you could give a right of appeal. Maybe you do not want to do that. I think that is unfair. I think it is arbitrary. But surely



to God arbitrary authority is not the thing the NDP government wants to be remembered for in its first term.

**Mr Mills:** I have listened to what you have had to say and I have taken that into my head and I am prepared to stand this amendment down until we get a ruling, if that is really what you feel comfortable with.

**Mr Sorbara:** I am perfectly willing to have it stood down.

**The Chair:** Do we have unanimous consent to stand this down?

**Mr Morrow:** Yes.

**The Chair:** Okay, we will stand this down.

**The Chair:** Now we are on the government motion on page 15.

Mr Mills moves that subsection 4(8) of the Retail Business Holidays Act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

“(8) Subject to section 4.3, a bylaw under this section comes into force on the thirty-first day after it is passed by the council.”

1720

**Mr Mills:** I think it is self-explanatory. I will not go into that.

**Mr Sorbara:** Excuse me. It is anything but self-explanatory. Notice what they have done here. They have removed the section that says the council's decision is final, except that there is no right of appeal for the storekeeper if he loses. That is now unsaid, but it is there. What they have replaced it with is the 31-day appeal period, once again another little door open to the crusaders to harass the storekeeper who gets permission.

I guess you have to have this if, as it turns out, we are going to have that right of appeal. I hear these Bob Rae speeches about trying to facilitate the carrying on of business, and you say that you want the OMB to deal with these appeals expeditiously but you add a 31-day period where no one has to do anything except that the doors have to stay closed. Why would you do that? If you really wanted the OMB to deal with it expeditiously, why would you not say 10 days or five days? Why would you say 31 days? Do you not understand that for a storekeeper—

**Mr Mills:** I think you have to have 30 days.

**Mr Sorbara:** You do not. Mr Mills says, “I think you have to have 30 days.” You are in government now. You “have to have” what you decide. You are making laws now. We are making laws, so do not tell me that somebody else said, “You have to have.” You do not “have to have.” You can change this to read 10 days so that it gets done quickly. If someone is going to appeal, then he has got 10 days to do it. Why give him 31? That is five Sundays in some months. That is five days of not being able to do business, so even if he gets the bylaw, he cannot open the store for 31 days. Why not wait just 10 days? Can I plead with you to stand this down and think about maybe doing it for 10 days? At least that is just one Sunday.

Oh, there is the nod. Now we are making laws with nods. No, we cannot do that. What you are doing—

**Mr Mills:** Well, 30 is what we said.

**Mr Sorbara:** Well, 30 is what you are saying. Yes, that is reasonable, keep the store closed. He has just got the bylaw. He got it in October because he wants to stay open particularly for the month of October because it is Oktoberfest in Kitchener. He finally got it through. He goes to open the store and, “Sorry, you can’t do that; 31-day period; someone might appeal.”

Well, Gord, I just want to tell you that if you had the courage of your convictions, you would agree with me to make it 10. I would prefer five, but why 31? Why make it so long? When you talked about the appeal, the Solicitor General said you were going to expedite the appeal at the OMB even though for many cases it takes up to 15 months.

I move an amendment to this, sir. I want to move that the words “thirty-first” be struck and the word “fifteenth” replace it.

**The Chair:** Mr Sorbara moved that the words “thirty-first” be removed and “fifteenth” replace it.

**Mr Sorbara:** Now, just speaking to my amendment, I would have preferred 10. I am trying to negotiate. The New Democrats are great negotiators. They have all had great familiarity with the trade union movement. I am trying to negotiate something that is more reasonable. Just keep them closed for two more Sundays after they get the bylaw; that is 15 days rather than 31. That gives enough time for the United Food and Commercial Workers International Union, the Lord's Day Alliance of Canada or whoever else wants to appeal, to appeal.

Interjection.

**Mr Sorbara:** Fifteen days is enough.

**Mr Winninger:** Thirty is standard.

**Mr Sorbara:** Well, you have my motion.

**Mr Winninger:** Under the rules.

**Mr Sorbara:** Under what rules?

**Mr Winninger:** The rules of civil procedure.

**Mr Sorbara:** No, my friend. You are a lawmaker now. Under the rules of civil procedure, 31 days stands unless another appeal period is set out specifically in a statute. We have the authority. Do you not realize that you were elected to make laws, not to read them? That is the incredible thing about you guys. You think you are here to somehow enforce some sort of old, traditional system. Mr Winninger says, “The rules of civil procedure say 31 days.” I am telling him, this is not civil procedure; this is a new, fresh law. It will never have existed until we pass it. We have the ability to say, “In this case, because we want to expedite things, we’re not going to take the civil procedure standards; we’re going to say 15 days.” Are you kidding? Gerald Vandezande will be there on day one anyway with the appeal, so what do you have to worry about? I plead with you to support my amendment to the amendment, and I will support yours. How is that for a deal?

**Mr Poirier:** Do you really think the zealots will wait 31 days, my friend? No way. They will be there before the decision, for Pete's sake. They will be there during. They are not going to wait 31 days. This is a hell of a blow to anybody wanting to do business.

**Mr Carr:** I would think hopefully there will be some movement on this. I will be supporting the amendment to it and hopefully it will be done in the spirit of co-operation and a little bit of movement. That is why we are here.

At 5:20 my son took the ice in a hockey game and I am going to be missing that. Hopefully at the end of the day I will be able to say: "Gavin, congratulations on the shutout. You aren't like your old man; you're a good goaltender. Also, we did something worth while and in the spirit of co-operation."

We can make the change and make it a little more practical. I think 15 days would be a little bit of give and take on both sides. Hopefully there will be some.

**The Chair:** Seeing no further debate on the amendment, all those in favour?

**Mr Sorbara:** A recorded vote.

The committee divided on Mr Sorbara's motion, which was negated on the following vote:

**Ayes—3**

Carr, Poirier, Sorbara.

**Nays—6**

Carter, Fletcher, Mathysen, Mills, Morrow, Winninger.

**The Chair:** On the main motion, all those in favour?

**Mr Sorbara:** A recorded vote.

The committee divided on Mr Mills's motion, which was agreed to on the following vote:

**Ayes—6**

Carter, Fletcher, Mathysen, Mills, Morrow, Winninger.

**Nays—3**

Carr, Poirier, Sorbara.

**The Chair:** Mr Mills moves that clause 4(9)(c) of the Retail Business Holidays Act, as set out in subsection 1(1) of the bill, be amended by striking out "hearing" and substituting "public meeting."

**Mr Mills:** I think I spoke to this yesterday to some degree and I do not intend to belabour the issue again. This takes away the legalistic criteria for a hearing as opposed to a public meeting, as I already said, and it is in Hansard.

**Mr Sorbara:** Here is an amendment that I could be moved to support. I do not think it is of much substance. I am not sure what we are getting into in terms of creating a new statutory concept in a public hearing. I would have preferred some research as to what the statutory requirements are for a public meeting. I know what they are as developed by the jurisprudence on administrative law. A hearing has to be open and each party has to be given a reasonable time to make its case. "Public meeting" sounds to me more like a political venture or a town hall meeting, and I do have some concern, but if the government wants to use that sort of more political language for the process that will give rise to the consideration by a council as to whether to pass a bylaw, it is okay with me.

1730

I do warn them, though, that they may run into some sort of challenges, because some lawyer may look at the fact that we struck out the word "hearing" and substituted "public meeting." When a council proposes to have a public meeting and it frames it under the same rules it would have framed a hearing, some crafty lawyer might challenge it and say: "No, you didn't do the right thing. The Legislature didn't want a hearing as you know it, it wanted a public meeting."

Unfortunately, you are not setting out any criteria for what a public meeting is and what it should be, so I think you may be creating a little bit of mischief. But, you know, I always like to do whatever the government seems to consider reasonable, so I will support this.

**Mr Carr:** I will not be, basically because, as I said briefly on the other amendment that was similar, I think the municipalities resent the provincial government nit-picking over certain aspects. I really, honestly, truly believe that whether you call it a hearing or public meeting, some municipalities have more public input and more thought and more consultation with the public than a lot of our committees that have public hearings where people listen. So I will not be supporting it. As was mentioned, it is not a very dramatic motion, but I just feel that I cannot support it.

**The Chair:** Seeing no further debate, all those in favour of the motion? All those opposed?

Motion agreed to.

**Mr Sorbara:** Robots. Robotics. Welcome to the robotics.

**The Chair:** We will move on to the Liberal motion on page 17.

Mr Sorbara moves that clause 4(9)(d) of the act, as set out in subsection 1(1) of the bill, be struck out.

**Mr Sorbara:** I think probably I should begin this debate simply by reading what that clause says. Let me read first the introductory words of subsection 4(9), "Subject to the regulations made under this section, the council may"—and now the relevant clause—" (d) limit the number of applications that will be considered in any year."

I just think it is a foolish authority and responsibility to give to a council. I think probably the thing that should determine how many applications there are should be the marketplace, the extent to which an area perhaps is transforming itself into a tourist destination and the other criteria that more or less govern the marketplace and the Sunday marketplace.

For a council to set out in any year a particular number of applications that it will entertain I think might do great injustice to that individual who is intending to apply for a tourist exemption under circumstances where the council has run out of application forms because of the impact of this section, and maybe all the applications it has granted or considered in any one year are relatively minor in comparison to the big new tourist business that is going to make a difference on the main street of Ontario.



If you give that authority to the council, it will exercise it. They will set out that they are going to consider 50 applications, or they may do that. Why do you want to be so hard on applicant number 51? The council can still reject it. The council can still say, "We've decided you've met the criteria, but we're not willing to pass a bylaw." We already dealt with that earlier. The council can delay the application, can ask the applicant to come back in three or four months. It has the authority to do that already.

Once again, we are talking about elements of this bill that are arbitrary and unfair. This is among the most stupid, I think, because it does not add anything to council's ability to make its own determination as to whether a business should or should not get a bylaw without amendment—remember that—but it could put a council in a very difficult situation. It has limited the number of applicants and then in the calendar year, say around September, suddenly there are no more applications that will even be considered under the law, and some poor guy has to wait another three months, four months, six months before his application is considered.

Does that make sense? Does that enhance our ability to regulate Sunday shopping? I do not think so. I think it is arbitrary. I think it is foolish. I think it is unfair. If we strike it out, we will make the bill just a little bit better. I do not think the Solicitor General is going to approve of it, but I wanted to put my arguments on the record in a call for a better bill than the one we are considering at this point.

**Mr Carr:** I will be supporting it. Again, the word that comes to mind is fairness. Just because you happen to be the last one in means that you will not be considered. There will be the case of stacking the deck against one particular individual. I think all citizens should be treated the same, not because they happen to get in first ahead of somebody else, and then the municipality will say: "Well, that's it. We're only going to do a certain amount during the year." If you are going to do it, allow it to be even and fair for all individuals. I will be supporting it and hopefully the government will as well.

**Mr Mills:** Just briefly, to adopt this motion would, in my opinion, be a municipal nightmare in administering all the applications. You have to have some control, and this effects that.

**Mr Poirier:** Could I ask the PA to expand on why this would be a nightmare and not the other way around?

**Mr Mills:** No, I am not going to.

**Mr Poirier:** Why not?

**Mr Carr:** It's not in his notes.

**Mr Mills:** I am not talking from my notes.

**Mr Sorbara:** You are talking nonsense then, Gordy. You are talking nonsense.

Interjections.

**The Chair:** Order, please. Mr Poirier still has the floor.

**Mr Winninger:** Tell him to call off the dogs. Let's be nice.

**Mr Poirier:** I was being nice until something happened here.

Honestly, Gord, would you please tell me how you would perceive this to be a nightmare? I am intrigued by that.

**Mr Mills:** I would imagine if you did not have some control over the number of applications, a municipal council could be totally engulfed with applications to the extent that all its business would be dominated by this and it would be unable to function. It would become, in my opinion—and it is not in my notes, Gary—a nightmare. That is just my own opinion why we cannot support this.

**Mr Carr:** What's the government's position?

**Mr Mills:** I have not gotten to that. I am not reading that.

**Mr Sorbara:** I want to say that is the silliest thing I have heard today. Would a municipality want the authority to limit the number of business licences it would entertain in any given year? Do we say that if we have reached the number 100 then the 101st applicant for a business licence will have to wait until next year? What in the world are you talking about?

**Mrs Mathysen:** If there were 110 applicants—

**The Chair:** Mr Sorbara has the floor.

**Mr Sorbara:** I would love to hear from the member for Middlesex.

**Mrs Mathysen:** If there are 110 applications, Mr Sorbara, surely the municipal council would be bogged down in all of those and could not function.

**Mr Sorbara:** Oh, well, we would not want that. No, you are right. Oh, I am sorry. You are right. I defer. That is right. We would not want municipal council staff to have to earn their salaries.

**Mrs Mathysen:** Hence, you have very clearly proved what Mr Mills said in the first place by your own admission.

**Mr Sorbara:** You guys are really nuts. If you run this province too long—

**Mrs Mathysen:** We are listening very carefully to what you are saying, Mr Sorbara.

**The Chair:** Order, please.

**Mr Sorbara:** I move we put the question. I want a 20-minute bell on this. We will vote Monday on it, okay? Shall we agree to that?

**Mr Fletcher:** Are you calling closure?

**Mr Sorbara:** No.

**The Chair:** There is no one else on the list.

**Mr Sorbara:** There is no one else on the list.

**The Chair:** Calling for a 20-minute bell, we will adjourn until Monday at 3:30 pm.

**Mrs Mathysen:** We're not going to be here on Monday, Mr Chair.

**The Chair:** Oh, a week from Monday.

The committee adjourned at 1739.

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** Cooper, Mike (Kitchener-Wilmot NDP)

**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)

Carter, Jenny (Peterborough NDP)

Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathysen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Winninger, David (London South NDP)

**Also taking part:** Kormos, Peter (Welland-Thorold NDP)

**Clerk:** Freedman, Lisa

**Staff:** Beecroft, Doug, Legislative Counsel



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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 18 November 1991

### Standing committee on administration of justice

Retail Business Establishments  
Statute Law Amendment Act, 1991

Chair: Mike Cooper  
Clerk: Lisa Freedman

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 18 novembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 modifiant des lois  
en ce qui concerne  
les établissements de commerce  
de détail

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 18 November 1991

The committee met at 1548 in room 228.

### RETAIL BUSINESS ESTABLISHMENTS STATUTE LAW AMENDMENT ACT, 1991

### LOI DE 1991 MODIFIANT DES LOIS EN CE QUI CONCERNE LES ÉTABLISSEMENTS DE COMMERCE DE DÉTAIL.

Resuming consideration of Bill 115, an act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them / *Projet de loi 115, Loi modifiant la Loi sur les jours fériés dans le commerce de détail et la Loi sur les normes d'emploi en ce qui concerne l'ouverture des établissements de commerce de détail et l'emploi dans ces établissements.*

**The Chair:** I call this meeting of the standing committee on administration of justice to order.

**Mr Sorbara:** I seek unanimous consent to have speeches welcoming Ms Swift back to the room. Is there unanimous consent?

**The Chair:** No, there is not.

Section 1:

**The Chair:** We will proceed with the vote on the Liberal motion on page 17.

**Mr Sorbara:** Is that where we were when we were voting last week?

**The Chair:** We had a division called at the end of last meeting.

**Mr Sorbara:** Page 17? I have that marked as defeated already.

**The Chair:** We will proceed with the vote. All those in favour? All those opposed?

Motion negatived.

**The Chair:** We will proceed to the government motion on page 20.

Mr Mills moves that clause 4(10)(b) of the Retail Business Holidays Act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

“(b) governing the procedures and fees for processing applications, the combining of applications and public meetings and limitations on the number of public meetings held by a council.”

**The Chair:** Discussion, Mr Mills?

**Mr Mills:** Just one moment, sir. I am getting myself in order.

**Mr Sorbara:** Perhaps while the parliamentary assistant is trying to find the paper that tells him what this section means, I might just say that we continue to object to the notion—it is contained in this clause that is to be added—that a council should limit the number of public meetings it holds. This makes no recognition at all of the

fact that the economy is a dynamic thing. Right now under the current government the economy is a stagnant thing, but sometimes in Ontario the economy is a dynamic thing.

It would be foolhardy to empower councils to limit the number of applications at the beginning of the calendar year, for example, and find that by June or July there were a number of new businesses, given better economic times, that wanted to take advantage of at least making an application. That is why this amendment is foolish; that is why the government should not be proposing it, and that is why the whole damn bill is foolish.

**The Chair:** Thank you, Mr Sorbara. That is duly noted.

**Mr Mills:** This technical amendment arises from the government's proposed amendment. The “public meetings” provision replaces the “hearings” requirement and accordingly references in proposed clause 4(10)(b) must be to “public meetings” and not “hearings.” We spoke to this before. That is the rationale behind it.

**Mr Carr:** I will be very brief. Again, as I said, because this ties in with one of the other government motions, I am opposed to telling councils how they will proceed. I think back to when the mayor of North Bay came in and talked about Toronto-based solutions. As I look at this, I can just see the councils across the province rolling their eyes about the provincial politicians telling them exactly what limitations there will be on the public meetings and how they will be held. I will be voting against this.

**The Chair:** Further debate? All those in favour of the motion? Opposed?

Motion agreed to.

**Mr Sorbara:** On a point of order, Mr Chairman: Just before I move the next Liberal motion, which is designed to bring some reason and sense to an otherwise terrible piece of legislation, you will recall that the standing orders provide that where possible the government and each of the opposition parties shall bring forward their amendments to bills considered by a committee at least two hours before the committee begins deliberation of a bill clause by clause. It is not two hours before we begin deliberation of clause-by-clause; it has been several weeks since we began deliberation of clause-by-clause.

This is the bad news right here: I want to know if the government has the audacity at this late hour to present us with another amendment. I do not have to ask that question any more, because the clerk has just put another amendment before us.

**Mr Carr:** But we are holding up the bill, right?

**Mr Sorbara:** But we are holding up the bill. That is right. Just on that point, we held up the support and custody orders enforcement bill too, did we not? The bill that is now going to be put into force next March is the one we held up back in May. Mr Carr makes a very good point.

**The Chair:** Your point?

**Mr Sorbara:** I am speaking to that rule in our standing orders. I see now that the government is putting forward another amendment, sir, because the amendment they had, number 30, was clearly out of order and you would have had to rule that out of order.

Worse than that, sir, there was an agreement, a week ago Thursday, that we would complete this legislation today and that we would even go beyond 6 o'clock if we needed to. We agreed to do that and they agreed to do that. The agreement was that all the government motions would get passed, save number 30, which the Vice-Chair of this committee agreed was out of order and would not be proceeded with and which you, sir, advised me candidly, privately, in the Legislature you would have to rule out of order. The agreement was that we would proceed, but you would not get this one little piece, this one little offensive provision, the vigilante provision which allows any citizen who is upset that a store is open to go to the court and ask the court to close it. This is vigilante legislation.

The Ontario I know is an Ontario that has police enforce these kinds of statutes, that does not invite any citizen, perhaps for economic reasons, because he is upset that the store is open and his store is not open, to go to the court and get an injunction. This is ill advised. This is a gift to some trade union somewhere that wants to have its members unleashed on those terrible, naughty storekeepers who actually want to try and make a living.

But worst of all, we had an agreement. The great NDP, this great party of collective bargaining and making agreements and honouring agreements, tells me today: "Sorry, that agreement's off. We figured out a way to overcome the technicality. Technically we can ram this down your throats, notwithstanding what we said a week ago Thursday."

I find that so offensive. I find that you have no honour. I find that you have no dignity. I find that you are not people of your word. To slip this into my hands at the end of question period today is the worst thing that has happened throughout the whole course of consideration of a bill that has not been entirely pleasant. I do not know why you do it. You could have got your law. It could have been passed. The stores could open in December under the agreement we had, but you offend and you offend and you offend.

I just want to tell you, because I have had experience of being in a government that has been defeated, that it is just this kind of offence that leads to the lack of confidence and the cynicism that will bring you down. I just want you to understand that. There is a way of conducting yourselves with honour that goes beyond the rules. Oh, yes, you are technically in order now. Yes indeed, there is no doubt about it. You solved the problem. You broke your word. You did not sign a document, but you broke your word, and any one who tries to deny that—well, there is a special place in you know where for that kind of person. We had an agreement.

**The Chair:** Thank you, Mr Sorbara. When we get to—

**Mr Sorbara:** I am outraged and I object to the presentation of this amendment now. It is out of order, it is inappropriate and it brings dishonour on the minister, on the

ministerial staff and on the members of this committee. It is an insult. I know my friend Mr Carr has a word to say on this point of order.

**The Chair:** Thank you, Mr Sorbara. I will listen to any comments anybody has when we get to amendment 30.

**Mr Sorbara:** I want a ruling on the point of order. I say that it is out of order. I say that to present me with an amendment now is out of order. The rules say two hours before.

**The Chair:** The ruling is, when time permits.

**Mr Sorbara:** Are you ruling that you are not upholding my objection?

**The Chair:** I am not upholding it.

**Mr Sorbara:** I would like a recorded vote on that. I challenge the Chair or whatever I am supposed to do. I challenge the integrity of the Chair and the government members.

Derek, you shake your head, but you are a big trade union negotiator. After you have negotiated an agreement, do you go back the next day and say: "Hold it. We want one more thing"? You make me sick.

**The Chair:** Thank you, Mr Sorbara. All those in favour of appealing the Chair's ruling to the Speaker?

The committee divided on Mr Sorbara's motion, which was negatived on the following vote:

#### Ayes—3

Carr, Poirier, Sorbara.

#### Nays—6

Carter, Fletcher, Mathyssen, Mills, Morrow, O'Connor.  
1600

**The Chair:** The appeal is defeated.

Next is the Liberal motion on page 21.

**Mr Sorbara:** Oh, boy. It would be so good to defeat you guys. I tell you, I could almost taste it. Just a little bit of honour, that is all we want.

**The Chair:** Mr Sorbara, on the Liberal motion, page 21.

Mr Sorbara moves that clause 4(10)(b) of the act, as set out in subsection 1(1) of the bill, be struck out and the following substituted:

"(b) governing the procedures and fees for processing applications and the combining of applications and hearings."

**Mr Sorbara:** The purpose of this amendment is to clean up some of the mess you put in the original bill.

**The Chair:** Further debate? Seeing no further debate, all those in favour of the Liberal motion? Opposed?

Motion negatived.

**The Chair:** The Liberal motion on page 22.

Mr Sorbara moves that clause 4(10)(d) of the act, as set out in subsection 1(1) of the bill, be struck out.

**Mr Sorbara:** Let's get it on the record. Let's set out clearly why clause 4(10)(d) is no good. That comes within the regulation-making section, subsection 4(10). It begins, "The Lieutenant Governor in Council may make regulations," and then we go down to clause 4(10)(d), which reads, "requiring that a bylaw that applies to a retail business establishment within such class of retail business establishments as



may be set out in the regulation may be considered only on the application of the person carrying on the business.”

Do you not see what is wrong with that? It does not give people enough freedom and flexibility to bring matters before council for their consideration. Leaving that section in does not add anything, it is restrictive.

**Mrs Mathysen:** It is not that.

**Mr Sorbara:** Well, Mrs Mathysen, you and your constituents are going to have to live with this bill and that is the sad news. That is the unfortunate part of what we are doing here. The whimpering over there is—I guess your constituents will remember it.

We would prefer that the views of the people in the province who want greater freedom and flexibility be reflected in the regulation of Sunday shopping. That is the reason we are arguing to strike out this section through this amendment.

**Mr Carr:** I will be supporting this motion. Again, I think the key words are the restrictive provisions as a result of this. I will be supporting this motion so we can remove clause 4(10)(d).

**The Chair:** Thank you, Mr Carr. Seeing no further debate, all those in favour of the Liberal motion? Opposed?

Motion negatived.

**The Chair:** We move on to the PC motion, page 23. Mr Carr.

**Mr Carr:** Due to the defeat of our motion 6, I will withdraw motion 23.

**The Chair:** We will now move on to the Liberal motion on page 25.

Mr Poirier moves that section 4 of the act, as set out in subsection 1(1) of the bill, be amended by adding the following subsections:

“(12) A municipality may by bylaw refuse to consider or pass bylaws under subsection (1).

“(13) A bylaw under subsection (12),

“(a) may be effective until a specified date;

“(b) may apply to one or more classes of retail business establishments;

“(c) may apply to all or any part or parts of the municipality;

“(d) may be limited to the opening of retail business establishments on holidays at specific times or for a certain number of hours;

“(e) may apply to the opening of retail business establishments on some holidays and not on others;

“(f) may be restricted to the opening of retail business establishments on holidays during specific periods of the year;

“(g) may classify retail business establishments.”

**Mr Poirier:** Gary, did you have some points to make on that? Do you want to open it up?

**Mr Carr:** Yes, I will be supporting this particular motion. I believe that on the one hand we have brought in some of the motions on the government side to basically restrict the municipalities in their ability to open, not the least of which is that now you are going to be able to appeal it to the Ontario Municipal Board. What this does is

plainly and simply lay out the criteria a municipality will follow under those circumstances. If you are going to be fair and say on the one hand, “This is what you are going to do if you are going to open,” then there should be some corresponding restrictions on the other side. This does that, so I will be supporting it.

**The Chair:** Further debate? Seeing none, all those in favour of the Liberal motion? All those opposed?

Motion negatived.

**The Chair:** We will now proceed to 26 1/2, the government motion.

Mr Mills moves that section 1 of the bill be amended by adding the following subsection:

“(1.1) The act is amended by adding the following section:

“4.4 Despite any other provision of this or any other act or the bylaws or regulations under this or any other act, a retail business may be carried on in a retail business establishment on the Sundays in December preceding Christmas Day.”

**Mr Mills:** I do not think this needs too much explanation. It recognizes the needs of the community in December when 25% of the business is done. The government, by introducing this amendment, has shown a degree of flexibility and balance.

**Mr Sorbara:** Your hand is going to get sore patting yourself on the back.

**Mr Mills:** I am not patting myself on the back, I am stating facts. These are the facts.

**Mr Sorbara:** How about honour?

**The Chair:** To the Chair, Mr Mills.

**Mr Mills:** I beg your pardon, Mr Chair. I get somewhat carried away.

**Mr Sorbara:** I wish you would get carried away. I wish you would get serious about this.

**Mr Mills:** Nevertheless, I think this amendment is needed and is well received. Without further ado, I will leave it for the discussion of the committee.

1610

**Mr Sorbara:** The parliamentary assistant points to this section and uses it to indicate that the government is flexible, that the government is listening and that the government is responding to the needs of the people. Why do that for only one twelfth of the year, sir? Why tell the people of the province, “For one month you can have the freedom, opportunity and liberty to make up your own mind”? Why do that? What are you trying to achieve?

I suggest this little provision, which you thought would somehow save the government’s reputation in respect of Bill 115, destroys the government’s reputation because it adds a great deal of hypocrisy to a bill that is an insult to the people of the province.

Mr Chairman, can we go right back to the beginning of the bill? The whole purpose of this bill, believe it or not—we forgot this—is to provide the people of Ontario with a common pause day. This is an opportunity for workers to spend a day with their families. This is the great worker

party giving something to workers—not nurses, not flight attendants, not factory workers, not clerks who work in lawyers' offices, not lawyers, not journalists; they are not workers in the minds of the New Democratic Party. But there are 50,000 retail workers out there who need the government's attention and the right to a common pause.

Why would you ever need a right to a common pause? I think the answer is clear: You work a lot, you are busy and every day you have to go to the workplace and earn the money to put the bread on the table. I do not say "bacon" for reasons I will keep private. There you go. Society is too busy. We have to close down the Eaton Centre, we have to close down the jewellery store in the plaza and we have to close down the sporting goods store, even though you might want to buy a baseball on Sunday and take your kids out to the park to play. Why do we have to close all that down? Because workers need a rest.

We looked to the Supreme Court of Canada for guidance on that: "This is okay. Workers need a rest." The great irony and hypocrisy is that for many of us December is the busiest month of the year when we are running around to the office Christmas party or shop-floor Christmas party or Rosh Hashana Christmas party, all that stuff. Other people are running around like crazy. You are trying to get your shopping done. It is hectic. The kids want you to go to the school Christmas play. It is the busiest time of the year. "Damn the retail workers. They do not need a common pause in December. No, no, there are other priorities in December."

Allan Pilkey, the great Solicitor General who is going to bring the great common pause to Ontario, says: "But not in December. Heavens no." What does Gerald Vandezande say about this? He is trying to protect the Christian faith.

**Hon Mr Pilkey:** He will not be shopping on Sundays in December.

**Mr Sorbara:** The Solicitor General says Gerald Vandezande will not be shopping during December. If this economy gets any worse, if many more people are out of work, if the Treasurer does not start to do something pretty soon, nobody is going to be shopping on Sundays in December or any other day because they are out of luck, they are out of money, they are out of hope, and tomorrow they are probably going to have a tax increase.

It is okay, because December is a special month, although not for the Muslims surprisingly. They can shop now. Every store can open in December. "You people of the Islamic faith better realize that we have our priorities down at the Eaton Centre. Never mind human rights and never mind fairness and never mind constituency. We have to worry about our revenues."

I would love to have been at the caucus debates on this. The only joy I have in this whole exercise is taking up your caucus and cabinet time. You have it all wrong. The people of North York told you that you had it all wrong in a referendum. They said, "Freedom."

**Mrs Mathysen:** You financed that waste of time, did you not?

**Mr Sorbara:** Your voice is a lovely background for this speech.

**Mrs Mathysen:** I know, Mr Sorbara, but in your diatribe you forgot to mention who finances your ability to waste the taxpayers' time.

**The Chair:** Order. Mr Sorbara has the floor.

**Mrs Mathysen:** I think you should fill that part in for the taxpayers.

**Mr Sorbara:** I think you will have your opportunity to speak on this. I am desperately waiting to hear the government rationale. I could not believe it when they started to whisper in my ear and in the ears of the other members: "Maybe we can get you December. Maybe we can get December open."

What about the common pause? What about the workers from the United Food and Commercial Workers Union who have no interest at all in working on Sunday in December? What happened there? They want to be with their kids. I want to be with my kids on Sunday in December. I do not want to have to be forced to go down to Canadian Tire and buy a wrench. I do not want to have to go down to the local Pro Hardware store and buy Christmas tree bulbs on Sunday in December. This is outrageous. I thought Christmas and December was about peace and joy to the world, not about Sunday shopping. I thought that was what the common pause day was about.

We are going to have a common pause in July and August. Do you know why? Because there ain't no work. So you might as well sit at home and have a common pause, not one day a week, seven days a week.

I think Mel Lastman—my God, I am looking to him for authority; things have really gotten bad—said it best. He said, if you are going to make an exception, for goodness' sake do it in January and February when retailers are crying out for an opportunity to recover. Do it in March and April, in the beginning of the new year when you may have a new sense of hope and faith and opportunity for the future. Do it in June or July or August. Do it in September when the kids are going back to school. Do it in October for Thanksgiving. Give thanks, open up the stores. Do it in November when the Legislature debates on an almost annual basis what to do on Sunday shopping. But do not do it in December when people are so busy and tied up and their lives are so burdened with all the joy of Christmas. My God, keep those stores closed.

In fact, we should have more restraint. We should have Shoppers Drug Mart close in December so that not too many people will be drugged for Christmas; they can actually really enjoy it. Change the drugstore provisions to allow only the ones that the United Food and Commercial Workers Union wants open, the ones that are 2,400 square feet and smaller. You know the ones. There are not very many of them left. They cannot survive with that size of store any more, but that is what they want, so keep those open. But my God, let us give people a common pause in December and let them have the freedom to make up their minds the rest of the year.

I think you look silly. I have already established that you are not a party of honour. You broke the word given a week ago Thursday and now you look silly. One more strike, coming in about three years, and you guys are out of here.



**The Chair:** Thank you, Mr Sorbara. Further debate? Mr Carr.

**Mr Carr:** Thank you very much, Mr Chair. I will be supporting this motion. I see the other side has now changed its opinion because I am supporting it, so it will probably be defeated. I have not won one yet. I have not had as hard a time winning since my last year of playing hockey. I have lost every one, I think, on this.

My bill would have done the same thing. It would have allowed the stores to open during that period and then we could have had the debate on this bill. We would not have had people lining up saying: "When is this thing going to get passed, if it gets out of the justice committee? What is going to happen? We want to open for Christmas." It is interesting; I am even getting calls from the former Solicitor General's office. Mr Farnan's office is calling me and saying, "When is your bill going to pass?" I guess since young Michael has moved on to other things he does not worry about who replaced him. Maybe you should say hello to him, Mr Pilkey, and tell him that you are the new Solicitor General. But it was kind of interesting to get that comment.

Unfortunately, it will be late for some of the workers. Some of you may have seen on TV as recently as the other night that one of the stores will be closing down. They said the reason those people will be laid off and out of a job is that they cannot open on Sunday. Mr Sorbara referred to a couple of plebiscites that were on the ballot, one in North York, and I guess the region of Wentworth had a vote on Sunday shopping; both of them wanted to be open.

It was interesting to see where this particular piece of legislation came from. I will not embarrass the member who told me this, but one of the NDP members came to me and said the same thing Greg said, "Boy, maybe we can get December open." He said something which really struck me, and he did not even realize he had said it. He said, "We had to go back and check with the unions on this before we could proceed with it." You will know it is a "he," but outside of that I do not want to embarrass him by saying who it was. He did not even realize what he had said to me, but what an offence that was. You talk about talking all summer with the public, but when they made a change to the amendments, it was, "We had to go back to the unions to see if it was okay with them." I think that is basically what this entire bill is about. That is what is driving this bill. The people behind this bill are not the average people that we heard from in the summer. In fact, it is UFCW that is driving this agenda.

I will be supporting this motion because I hope some of the stores will be allowed to remain open in the Christmas period. I am doing it reluctantly, because we could have had a bill that would have been separate, that could have passed through the House. Quite frankly, we could have been shopping last weekend if the advice I put forward at that time had been adhered to and if it had not been for the date. The Solicitor General said the only thing holding it up was that the date was wrong. He could have changed it and made it December 1, and we would not now have all these people waiting on pins and needles to see how fast we can get this through, to see if we can have

Sunday opening during the Christmas period. So I will be supporting it.

1620

**The Chair:** Thank you, Mr Carr. Further debate? Mr Morrow.

**Mr Sorbara:** Pontius Pilate.

**Mr Morrow:** I am speaking in favour of this, obviously, but now that the Tories are in favour, well, what a difference.

**Mr Sorbara:** They will probably vote against it.

**Mr Morrow:** We talked as a caucus about this term being a part of economic renewal. I can see how this amendment would basically make for economic renewal, especially in December, when most of the stores do 80% of their sales. Just in that, this amendment makes a lot of sense.

**Mr Sorbara:** It is a common cause.

**Mr Morrow:** Excuse me, Mr Sorbara. I gave you time to talk. Will you please give me time to talk?

We heard over 285 submissions in 11 cities this summer. People were basically saying yes, they did want something. I think it is really unique that the New Democratic Party finally listened, or that any government finally listened, to the people who made submissions. This is a really good move. We represent all of Ontario, not just parts of Ontario.

**Mr Poirier:** This is obviously very much a compromised government motion. I do not know what I would pay to get a recording, an Instant Hansard of the NDP caucus discussion or cabinet discussion when this proposed government amendment came forward. That would make for some very interesting reading or hearing; or even better still, a video. I can just imagine a video of caucus or cabinet discussion on this particular motion.

**Mr Mills:** Or write a book.

**Mr Poirier:** We could write a book. A film, maybe a horror film.

**Mr Sorbara:** A horror movie; you have it. That is it. Ding, ding, ding. Five points. Do you want to move up to the 10-point question?

Interjections.

**The Chair:** Order, please.

**Mr Poirier:** Friday the 13th Part 9 or something like that. What I see here is a compromise. I can imagine a lot of the NDP supporters upset with this, because they will say this creates a precedent. With time, if reason prevails, they will understand that with the situation of the economy and everything, retail business will have to have the opportunity to choose when and how it does business in this province.

I spent the weekend looking at some statistics that showed what businesses feel Christmas sales are going to be like. It is a very bleak outlook. To tell you the truth, I am glad you were able to compromise on this at least. What I am afraid we would have seen even more, had you not done this, is that in January and February a lot of small businesses would not be able to pull through what is traditionally their best economic segment for sales, the month before Christmas.

I do not know what happened to the NDP members, but thank God, maybe they fell on the floor or something, hit their heads, and sensed that as a compromise—

**Mr Sorbara:** They had a Liberal moment.

**Mr Poirier:** They had a Liberal moment in the sense that business people will have a chance to open in December. It is a compromise. It does not go as far as I want, but I think if you respect those people, the small businesses that create the vast majority of jobs in this province, at least you made enough of a compromise to allow them to be open for December. Hopefully, God permitting and the economy permitting, they are going to be able to pull through with enough sales in December so that when January and February come along, they will be able to say, "Maybe we can make it."

I am sure that deep down you realize they are not just suffering from the December blues these days; they have been suffering from the retail sales blues for many, many months. If you look at all the economic indicators, they are going to suffer the economic retail blues for many months to come. This is not a short-term problem. You have offered them a short-term solution to try and help them at the toughest time of the year. I tip my hat to you, but time will demonstrate, with what is happening to the retail sector in all of North America, especially if the federal Tories are nerdy enough to bring Mexico into this free trade deal, that retail business is going to scamper even more.

**Mr Sorbara:** Bob Rae is not going to let that happen.

**Interjection:** There will be a revolt in the streets if he does.

**Mr Sorbara:** The guy who is going to have a war on the GST would not let that happen.

**Mr Poirier:** I think it will be shown that the government suffered enough pressure to make sure this amendment does not go beyond December. I will support this only because it may help our friends, the people who own and operate the small businesses that create, as I said earlier, the vast majority of Ontario jobs. Hopefully it will help them along. But, my God, I wish you would have let your reasoning go beyond that; and I have a feeling deep down that you would have wanted that too if it had not been for the pressure on your party and your government. But I respect that; we know who your friends are.

Time will demonstrate that you should have allowed that year-round because their problem is year-round, but at least you were able to bend a bit, like a willow. I will support this motion. Thank you, Mr Chair.

**The Chair:** Thank you, Mr Poirier. Further debate? Seeing no further debate, all those in favour of government motion 26 1/2? Those opposed?

Motion agreed to.

**The Chair:** Okay, on Liberal motion 27?

**Mr Sorbara:** Withdrawn.

**The Chair:** Withdrawn?

**Mr Sorbara:** We have another plea to make.

**The Chair:** On Liberal motion 28?

**Mr Sorbara:** Yes.

**The Chair:** Mr Sorbara moves that subsection 6(2) of the act, as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"(2) A bylaw of a municipality that was in force under this or any other act immediately before the coming into force of subsection 1(2) of the Retail Business Establishments Statute Law Amendment Act, 1991 and that relates to the opening or closing of a retail business establishment on holidays continues in force until the third anniversary of that subsection coming into force or until the bylaw is repealed, whichever is first."

**Mr Sorbara:** I want you to support this one, and I want you to understand the problems that arise for the people in Windsor if you do not support this one. Look what has happened in Windsor. Under the law that exists right now, they voted in favour of more or less allowing stores to stay open on Sunday. I think some stores are still not permitted to stay open, but more or less the retailer has an option to stay open on Sunday.

They passed that bylaw in July or late June; I cannot remember which. If we do not put this amendment in, then notwithstanding that they have done that, the very day this becomes law the stores will have to close, because as subsection 2 now reads, bylaws in force on the third day of June 1991 continue in force "until the third anniversary of that subsection coming into force or until the bylaw is repealed, whichever is first." Bylaws that come into force after June are immediately made null and void under subsection 2.

We should not do that to Windsor because its bylaw was put before council before June 3. There was some delay—I am sure my friend Mr Mills remembers our hearings there—in considering the bylaw because it was anticipated that the government would be bringing forward a bill. They delayed consideration and they did not get their bylaw passed till after June 3. They should have the same opportunities to have their bylaw continue in force as other communities who have passed similar bylaws; for example, Sault Ste Marie. There is no need to go against the wishes of the people of Windsor and their council on this issue.

I plead with you. It is simple and straightforward. If you pass this, it is basically the Windsor amendment and it allows the retailers of Windsor to continue to open, if they wish, under a bylaw passed legitimately by the city council in the city of Windsor.

1630

**Mr Carr:** I will be supporting this, and hopefully the government will. It is something practical. I am hoping we will not have to go back to a place like Windsor and start all over again, with all the problems, and rehash something that has been decided, so I will be supporting this motion and I hope the government will as well.

**The Chair:** Further debate? All those in favour of Liberal motion 28? All those opposed?

Motion negatived.

**Mr Sorbara:** Can we just send a big thank you to the committee on behalf of the people of Windsor? You have just closed them down again. Congratulations. We will get the press releases out as soon as we can. You had an



opportunity to defer to their wishes with this amendment. You just closed them down. There is 14% unemployment in Windsor right now. I was there on the weekend; 14% of the people are out of work.

**The Chair:** Order, Mr Sorbara.

**Mr Sorbara:** They will thank you for this; they really will. All you had to do was pass this. It just affects the community of Windsor. This is stupidity beyond belief.

**The Chair:** We will move to government motion 29.

**Mrs Mathysen:** Imagine, 14% of people unemployed and someone like you still working.

**The Chair:** Order, please. Mr Mills.

Mr Mills moves that subsection 7(3.1) of the Retail Business Holidays Act, as set out in subsection 1(3) of the bill, be struck out and the following substituted:

"(3.1) The minimum fine for an offence under this act, other than for a contravention of subsection 2(2), is \$500 for a first offence, \$2,000 for a second offence and \$5,000 for a third or subsequent offence."

**Mr Mills:** No debate.

**Mr Sorbara:** Here you are increasing the fines, just making them heavier and heavier. This is good business stimulation, actually, because storekeepers who stay open on Sunday are evil, demonic people, and if you fine them these big fines, they aggressively go after a larger part of the market. This is a sort of Floyd Laughren bill. This is how we are going to deal with a \$2.1-billion shortfall in revenue. Interesting: On the same day as we are talking in question period about a budget that is in shambles because the economy is in shambles, you say: "We're going to fine these guys even more. We're going to spank them hard. Look at these fines: a minimum of \$5,000 for a third offence." Some storekeepers are just going to say: "Forget it. This government doesn't want me to do business on Sunday or any other day."

I object to this. I think it is foolish. I think it is unprecedented. If you look at the system of fines that exists under these sorts of provincial offences, you will find that this is out of all proportion and order. Once again, it is driven by the people who send donations in to the New Democratic Party. During the course of the public hearings—

**Mr Fletcher:** You were hearing things.

**Mr Sorbara:** Yes, I was hearing things, that is right. I heard from a worker from the United Food and Commercial Workers International Union talk about the fact that they had actually discussed—

**Mr Morrow:** On a point of order, Mr Chair: Was that not ruled on when we were in Kingston at that time?

**Mr Sorbara:** This is part of my speech. I know where this amendment comes from.

**The Chair:** You have no point of order.

**Mr Sorbara:** I am just saying, sir, that during the course of these hearings, we heard a witness say in front of this committee that there were discussions among the United Food and Commercial Workers International Union local "to withhold our donations to the NDP until we get this Sunday shopping matter dealt with." That was the

testimony before our committee, the little pressure, "No more donations, no more campaign funds unless you pass the bill we want." This is what they wanted. I heard their submissions. They wanted higher fines, and lo and behold, here it is in the amendments, greater fines for storekeepers.

This is great economic stimulation. Ten per cent of the people in this province are now without work; 10% of the people do not have an opportunity of the kind you and I have. Do you think this stimulates that? Do you think this helps that? This is foolish. This is dumb. We are going to vote against it.

**The Chair:** Further debate? All those in favour of government motion 29? All those opposed?

Motion agreed to.

**The Chair:** The original government motion 30 has been withdrawn and we are on the replacement government motion 30.

**Mr Sorbara:** On a point of order, Mr Chair: This is the one that has been slipped to us today, the revision, is that right?

**The Chair:** Yes, Mr Sorbara.

**Mr Sorbara:** My colleague and I are not participating in this. We will return. Can you just send for us when you get beyond this?

**Mrs Mathysen:** Why don't you just throw yourself on the floor and stamp your little feet?

**Mr Sorbara:** We are not going to participate in this.

**The Chair:** Mr Mills moves that section 1 of the bill be amended by adding the following subsection:

"(3.1) Section 8 of the act, as enacted by the statutes of Ontario, 1989, chapter 3, section 6, is amended by adding the following subsection:

"(1a) In addition to its powers under subsection (1), the Ontario Court (General Division), on the application of any interested person, may order that a retail business establishment close on a holiday to ensure compliance with this act or a bylaw or regulation under this act."

**Mr Mills:** This amendment allows an interested person to ensure that the business establishment in violation of the act is in fact made to close. What happens now all too often is that a minimum or small fine is levied and the business continues to violate the act. This amendment will stop that. It will order the business to close.

**Mr Carr:** I too am opposed to this idea, although not as violently as Mr Sorbara. I guess I am not too surprised that the decisions were made. I will not hold anybody in this room responsible, because having dealt with members of this committee and other committees I realize that the shots are not called by the people in this room, and that agreements that may be made in good faith, when they go back to be ratified by the House leader or the whip, are sometimes changed.

We saw that in support and custody where the parliamentary assistant went out on a limb a lot of times and made decisions on his own. Unfortunately, some of them got changed when they went back, so I am not holding anybody responsible for this. I suspect that the people who negotiated and talked about the so-called deal did it in

good faith. If you look through your submissions, I suspect the pressure really came from the United Food and Commercial Workers.

Notwithstanding the fact some deals were made, I would like to speak on this. This is one of the things that in this day and age, when we are talking about resources in our court system and when we have such backlogs that people are being sprung for serious crimes such as assault and drunk driving, we are going to throw more into the system.

Some will say it is a different section. The big problem is that we are talking about resources, and if the resources are going to be put towards prosecuting people for being open on Sunday at a time when we are having assault victims and drunk drivers sprung free in this province, I say you are out of touch with the people of this province. When they look at it they will say, "What are the priorities? Should we be having people go to court to debate whether somebody should be open or should we be prosecuting drunk drivers and people who commit assault in this province?" I suspect the vast majority would say we should not be trying to prosecute individuals.

When I look at the time and effort that has been spent and will be spent in the courts dealing with whether somebody can open or not, it is little wonder the public is cynical and sceptical about politicians and the political process. It is absolutely insane that we would open up the door for people to apply to the courts over whether you can open or not.

1640

Very clearly, all this is about the amendments the United Food and Commercial Workers brought in. If you look through the presentation, the original wording was identical to theirs, word for word. You did not even have the wherewithal to change a few of the words. You had to because of the circumstances here, but basically they said, "We want to be able to shut somebody down, to go to court and get an application."

We heard during the period of time when the presentation was made that the police of this province said: "We don't want to be involved in this. We have a 38% increase in serious crime in this province. We have murders that have basically doubled in this very city we're sitting in. We don't want to be spending our time going up and down Spadina Avenue to see who is open and who is closed."

I am very opposed to this. I wanted to get it on the record. Obviously it is going to go through. The decision has been made. The deals that were cut here do not matter because the deals that were cut with other groups supersede them. I am definitely opposed to this and I would like to call for a recorded vote on this motion.

**The Chair:** Seeing no further debate, all those in favour of the replacement government motion 30?

The committee divided on Mr Mills's motion, which was agreed to on the following vote:

**Ayes—6**

Carter, Fletcher, Mathysen, Morrow, Mills, O'Connor.

**Nays—1**

Carr.

**The Chair:** Next is government motion 30 1/2.

Mr Mills moves that subsection 1(4) of the bill be struck out and the following substituted:

"(4) Subsection 8(2) of the act, as enacted by the Statutes of Ontario, 1989, chapter 3, section 6, is repealed and the following substituted:

"(2) An order under subsection (1) or (1a) is in addition to any penalty that may be imposed and may be made whether or not a proceeding is commenced under the Provincial Offences Act for a contravention of section 2 or of a bylaw or regulation under this act."

**Mr Mills:** This amendment merely prescribes the procedure that if someone is made to close under the previous amendment, he still can be charged under the Provincial Offences Act, in addition to the court order forcing him to close.

**The Chair:** Further debate? All those in favour of government motion 30 1/2? All those opposed?

Motion agreed to.

**The Chair:** We will now go back to Liberal motion 12, which was stood down.

**Mr Sorbara:** Hold on a second. It is withdrawn. We debated that, did we not?

**The Chair:** Yes, we did. Mr Sorbara withdraws it. We will now go back to Liberal motion 1, which was stood down.

Mr Sorbara moves that the bill be amended by adding the following section:

"0.1 Subsection 3(2) of the Retail Business Holidays Act, as amended by the Statutes of Ontario, 1989, chapter 3, section 3, is further amended by striking out 'and' at the end of clause (b) and by repealing clause (c)."

**Mr Sorbara:** Can I just say that this amendment deals with the drugstore issue and the problems that are confronted by large discount drugstores, which we have tried unsuccessfully to remedy during the course of consideration of these deliberations. I appreciate that you may have to make a ruling unfavourable to further consideration of this section, but before you do so, sir, as we are winding down, I want to congratulate those who have struggled to try and get the attention of the government on this issue.

I acknowledge quite freely and frankly that the defect in the act now, which makes an unfair and arbitrary distinction between drugstores over 7,500 square feet and those under 7,500 square feet, is the result of a Liberal law that was passed under Bill 113 about four years ago. I do not think that is reason enough to say we are not going to deal with it today.

I was particularly impressed by the hundreds of workers in those stores who were anxiously pleading with the government to consider this matter. I was impressed by the extent to which the discount drugstore operators argued their case and tried to bring their case to the government. During the course of these deliberations we were given some sense of hope that the government may even respond to the inequities here, and now I am sorry to report that the door has been slammed shut.

I do not think it is sufficient to say, "We will consider that at some other time." That is, first of all, an insufficient



answer and, second, it is dishonest to say we will look at it at some later date. The government would not dare open up the Retail Business Holidays Act again during the course of this Parliament. All of us who understand how Parliament works know that to be the case. The only recourse now is for those storekeepers to go to court and pay the huge costs that go with the pursuit of a legal action. That did not have to be the case.

**The Chair:** A point of order, Mr Morrow.

**Mr Morrow:** On a point of order, Mr Chairman: If you will please correct me on this, I am not sure which amendment Mr Sorbara is referring to, because I have not heard you read an amendment. Am I correct in that?

**Mr Sorbara:** You know precisely what I am talking about.

**The Chair:** The Chair is trying to be flexible at this moment, since we are winding down and almost at the end of our deliberations. Before I make my ruling, I will allow a few comments.

**Mr Sorbara:** The last glimmer of hope on this was that somehow the government would agree to at least put this provision in the regulations so that after further argument the matter could have been changed, if the government decided, by an act of cabinet rather than by an act of the Legislature. Even that door was closed. It is disappointing in the extreme to think of how little opposition MPPs have been able to accomplish during the consideration of this bill. We have to change the system to give MPPs more responsibility in the shaping of public policy.

We acknowledged at the beginning that you wanted to bring in a bill that was more restrictive, but we thought that, in the course of our argument and the matters we brought before you and in the course of matters coming before us through public hearing and the lobbying that has to go on here, this was one of the things we could have changed, that we could have set up some sort of system, because on balance it was so unfair and provided such a grand economic opportunity to those drugstores that come within the provisions. It is such an economic disadvantage to the rest we thought the party that talks about fairness and puts democracy in its very name would have seen this was an opportunity. It could have done it without any blemish, because it was our mistake. It was a Liberal mistake, a Liberal fault.

I am not saying I had all the answers, but if we could have opened up this section and even put it in the regulations, we could have done a little justice to those businesses, and particularly to the workers who work in them.

I am terribly disappointed to report that the battle is over, the struggle has been lost. Those discount drugstore owners are now going to have to pursue court action and it is not a happy day for me to have to end on those notes. I would like you to rule this out of order, sir.

**The Chair:** Thank you, Mr Sorbara. Before I make my ruling, Mr Carr would like to make a comment.

**Mr Carr:** If this had been something we might have had a look at—I guess I feel the same way and have gone on record that it is unfortunate all the efforts of the people to convince the government have not worked. They have

tried everything, all the techniques known to all of us, to try and convince this government. Had they been successful and had this gone forward—I personally think that if you are going to have a ruling, it should be for all businesses, regardless of size. If you are going to open, they should all be allowed to open. If you are going to close, there should not be discrimination.

It is out of our hands, and now the only people who will benefit from this are the lawyers who will spend time fighting this in the courts of the province. I would have been supporting that, had we got the chance.

**The Chair:** Thank you, Mr Carr. My ruling on Liberal motion 1 is that it is out of order because this section of the act has not been opened.

1650

**Mr Sorbara:** What about the one you just drove down our throats?

**The Chair:** Liberal motion 2.

**Mr Sorbara:** Before I move this, sir, let me describe what this amendment is all about.

This amendment is about acknowledging that you need to have a standard of fairness in determining who can and cannot stay open on Sunday.

In Ontario, under the law as it is now and the law as it will be after this has passed, those who operate bookstores are allowed to stay open. If they sell music in the form of cassette tapes or records—very few sell records any more—or compact discs, because they are a bookstore they are allowed to sell those products and that is fine. If they are a video store and rent or sell movies, they can stay open in Ontario. There was a strong lobby from the video store owners and they got the right to stay open. If they sell records, tapes and CDs, that is okay; they can sell those. But if they have a music store, they cannot stay open in Ontario.

You can go out and read a book. You can buy the sequel to *Gone With The Wind* and you can sit down and read it on Sunday and, if you want, you can go to the video store and get a videotape copy of the movie *Gone With The Wind*.

**Mrs Mathyssen:** Does that mean you have given up the pornographic movies you used to watch?

**Mr Sorbara:** Will you just quit insulting me for a moment? Would you ask her to withdraw that? She said, "Does that mean you have given up watching the pornographic movies you used to watch?"

**The Chair:** Mrs Mathyssen, would you withdraw it?

**Mrs Mathyssen:** I withdraw it. It is just that I am confused. Last time it was pornographic movies.

**Mr Sorbara:** You have not added to the enjoyment of participating on this committee, I say to the member for Middlesex.

You can get a copy of the movie *Gone With The Wind* and sit down and watch that, but if you want to listen to a taped version of the music from *Gone With The Wind*, the law says your store cannot stay open. You can read, you can look, but you cannot listen to music.

I brought this amendment here because one music store owner is now subject to some \$15,000 in fines because of his own personal situation. He is in a little plaza where the bookstore sells tapes and music and can stay open, and just a few doors down the video store sells tapes and music and can stay open, but his main business is selling music—Bach and Beethoven and maybe Bachman Turner Overdrive—and he cannot stay open.

His customers come there on Sunday and the doors are closed, so where do they go? They go to the bookstore, they go to the video store and they buy the music, but he cannot stay open. The police come and they fine him—\$15,000 in fines so far. He talked to the policy people, or at least he had an appointment to talk to the policy people, and they just said: "Sorry, no. We are not going to help you."

What in heaven's name would be wrong with passing this right now, just approving it and allowing music stores to stay open on Sunday? Has the law not been strong enough? Have the unions not deliberated? None of those stores is unionized anyway. It would not be a big deal. Although I know it is out of order, and that is why I have not read it into the record yet, why not do something nice for one small group of storekeepers? Why not do that? Why not say, "We are going to make it fair"?

Entertainment is reading; entertainment is watching movies; entertainment is also listening to music. That would not destroy the common pause day. That would not upset anyone. No retail workers would be forced to work when they did not have to. So I plead with you and I move that the bill be amended by adding the following section:

"0.1 Clause 3(3)(d) of the Retail Business Holidays Act, as enacted by the Statutes of Ontario, 1987, chapter 36, section 1, is amended by striking out "or periodicals" in the first line and substituting "periodicals or audio recordings."

I am seeking unanimous consent to at least have it considered and put before the committee.

**The Chair:** Is there unanimous consent to put this before the committee? Seeing no unanimous consent, this motion is out of order.

**Mr Sorbara:** I am done. Thank God it is over.

**The Chair:** Shall section 1, as amended, carry?

Section 1, as amended, agreed to.

Section 2:

**The Chair:** Mr Mills moves that section 39ec of the Employment Standards Act, as set out in subsection 2(1)

of the bill, be amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:

"(c) because the employee,

"(i) makes representations in respect of a proposed bylaw under section 4 of the Retail Business Holidays Act at a public meeting under that section;

"(ii) commences or participates in an appeal to the Ontario Municipal Board of a bylaw made under section 4 of the Retail Business Holidays Act; or

"(iii) commences or participates in a challenge in any court to a bylaw made under section 4 of the Retail Business Holidays Act."

**Mr Mills:** I have a couple of brief comments. It is important to protect employees from reprisal for challenging a bylaw, in addition to the other protection provided in the bill, and from reprisal for refusing to work on Sunday or because the employee seeks to enforce his or her rights.

Basically, this provision provides protection to employees who are threatened, disciplined, suspended, laid off, penalized, intimidated or coerced by their employer as a result of refusing or attempting to refuse Sunday or holiday work, commencing or taking part in an appeal of a tourist exemption bylaw to the Ontario Municipal Board, commencing or taking part in a court challenge of the tourist exemption bylaw or participating in a public meeting to consider a tourist exemption bylaw.

**The Chair:** Further debate? Seeing no further debate, all those in favour of government motion 31? All those opposed?

Motion agreed to.

Section 2, as amended, agreed to.

Sections 3 and 4 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

**Mr Morrow:** In closing, now that we have seen Bill 115 pass through the justice committee, I would like to thank everybody. Hansard and Susan Swift, we appreciate it very much. I also want to thank all the people around the province who participated this summer. Greg, I am even going to thank you and your party, and the Tories for all the input they had. I would also like to thank Lisa Freedman.

**The Chair:** Seeing no further business before the committee, we will adjourn until the call of the Chair.

The committee adjourned at 1657.



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Première session, 35<sup>e</sup> législature

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Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 25 November 1991

The committee met at 1600 in room 228.

### SUBCOMMITTEE REPORT

**The Chair:** I call this meeting of the committee to order. Mr Chiarelli.

**Mr Chiarelli:** I would like to move adoption of the subcommittee report.

**The Chair:** I will read the report first so it is in Hansard.

"Your subcommittee met on Tuesday, 19 November 1991, and agreed to the following:

"1. Clause-by-clause consideration of Bills 28 and 29 will be scheduled for 25 November 1991. No witnesses are to be scheduled.

"2. Bills 7, 8, 74, 108, 109 and 110 will be considered together. The hearings shall commence with a briefing by each minister involved. All attempts shall be made to schedule these ministers together.

"3. All witnesses will be given one half-hour for their presentation.

"4. All attempts will be made to schedule witnesses presenting technical briefs at the beginning of the hearings.

"5. If there is sufficient demand for any one location outside of Toronto, the committee will consider travelling.

"6. The committee will consider paying the expenses of any witnesses so requesting.

"7. The clerk will write to the House leaders and whips requesting four weeks of sitting time during the winter recess for continued consideration of Bills 7, 8, 74, 108, 109, 110.

"8. The clerk should attempt to schedule the hearings on Bills 7, 8, 74, 108, 109, and 110 in room 151."

Mr Chiarelli moves adoption of the report. Any debate? Mr Morrow.

**Mr Morrow:** Mr Chair, would it be proper at this time to move an amendment to the report.

**The Chair:** Yes, it would be.

**Mr Morrow:** I move that commencing today we move into class action, with comments by the Attorney General and ministry staff if possible. Tomorrow, November 26, we will do public hearings and next Monday, December 2, we move will into clause-by-clause on class action. I believe the bills are 28 and 29.

**Mr Harnick:** What public hearings is Mr Morrow referring to? I did not know there were any public hearings. I did not know that any amendments were being proposed. Both opposition parties have indicated they support the bill. It is the government's bill; it has been on the order paper now for almost a year.

**The Chair:** Mr Morrow, can you clarify?

**Mr Morrow:** We are actually just talking about proper public consultation here, and that is all we would like. Are

you now telling me, Mr Harnick, that you do not want proper public consultation on this?

**Mr Harnick:** Perhaps you can enlighten me as to who the public consultation is going to be with and who requested public consultation for a bill that everybody is consenting to.

**Mr Morrow:** Let's pass this amendment, and then—

**Mr Harnick:** No, let's not pass the amendment. Let's come clean and tell me what is going on here.

**Mr Morrow:** What are you looking for, Mr Harnick?

**Mr Harnick:** Are you telling me there are people that want to be heard on this bill and have requested to be heard?

**Mr Morrow:** Yes, obviously.

**Mr Harnick:** Can you tell me the list of those groups? Then I can make my submissions. Why are you being so secretive? For somebody who is so big on open consultation, tell us who has requested the opportunity to be here.

**Mr Morrow:** Excuse me. Who is being secretive here?

**Mr Harnick:** Tell us who wants to be here.

**Mr Morrow:** I just put an amendment on the floor. Okay? Let's deal with it.

**Mr Harnick:** I am entitled to ask these questions.

**The Chair:** Mr Harnick, we have a list of witnesses.

**Mr Chiarelli:** Have you provided them to the committee?

**Mr Harnick:** Have they requested the opportunity to attend before us?

**The Chair:** The clerk has just received the list.

**Mr Harnick:** From whom?

**The Chair:** From the Attorney General's office.

**Mr Harnick:** Is there someone here from the Attorney General's office?

**The Chair:** Yes, there is.

**Mr Harnick:** Can I ask someone who these people are, and have they in fact requested the opportunity to be here?

**The Chair:** The clerk has the list as far as I know, Mr Harnick.

**Mr Morrow:** The clerk can read the list.

**Clerk of the Committee:** I could read the list into the record. I have not contacted any of these people at all.

**Mr Harnick:** Can we get some clarification as to who contacted whom? Or did they phone? Mr Morrow has indicated that they contacted the AG about the opportunity to be heard. I just want to know if that is true or not.

**Mr Morrow:** Yes, they have contacted the AG as far as I know. David Winninger, being parliamentary assistant to the the AG, may be able to answer that better than I can.

**Mr Harnick:** Good point. Maybe Mr Winninger can tell us if they contacted the Attorney General.

**Mr Winninger:** There are several organizations on the list, who appear to have expressed an interest in consulting, in making representations in connection with this bill. The clerk has a list of those names.

**Mr Harnick:** Perhaps the clerk can enlighten us about who they are.

**Clerk of the Committee:** I have a list that includes the Advocates' Society, the Canadian Manufacturers' Association, Energy Probe, the Canadian Environmental Law Association, the Canadian Bar Association—Ontario, Parkdale Community Legal Services, plus three more groups that are interested in making a written submission only.

**Mr Chiarelli:** A publicity scam by the government, that is what it is.

**Mr Harnick:** That is exactly what it is. Having spoken to the clerk earlier today and having been told who is on that list, I have now obtained a letter from Andrew J. Roman who is writing on behalf of the Canadian Bar Association—Ontario. Mr Roman states in a letter by fax transmission dated November 25, 1991:

"Further to our telephone conversation of this morning, this will confirm that the CBAO was contacted by the office of the minister to send a representative to appear before the committee hearing this matter. I have agreed to be that representative, although no specific time has been assigned to me for a presentation.

"I am also confirming that the CBAO did not initiate this request, nor seek to have any hearings. Rather, we hoped that the bill would go to third reading and be passed immediately, as all the stakeholders had agreed to its contents long ago and any proposed amendment could destroy the carefully crafted compromise the bill represents."

I think it is incumbent upon the government members of this committee to understand how this bill was written. It was written in a collaborative effort by the Advocates' Society, the CBAO, the environment people, the Parkdale legal clinic, the Canadian Manufacturers' Association, all of the people the clerk has read out.

This business of having hearings by the people who in fact authored the bill—because it was not authored by Howard Hampton—is nothing more than a crash charade. Let's pass this bill. Everybody agrees to it. I do not know why we are playing games here, because that is all we are doing. This is the biggest pile of nonsense I could ever see and, quite frankly, when Mr Morrow stands up and tells me what he did, he is misrepresenting the truth. There is absolutely no reason to have hearings.

**Mr Morrow:** I want an apology.

**The Chair:** Mr Harnick, you may want to reword that.

**Mr Fletcher:** Withdraw.

**Mr Harnick:** I am not withdrawing. I am not leaving either, because the facts are, and I hold them in my hand, that what you are telling me is not the truth. For some reason the government does not want to pass this legislation. For some reason they want to delay this legislation for ever. There is absolutely no reason to waste people's time to come down here to say that you consulted, because, for God's sake, they wrote the bill.

**Mr Winninger:** Withdraw the allegation first.

**Mr Harnick:** I will withdraw the allegation if you withdraw the nonsense of dragging people down here for hearings when nobody wants the hearings.

**The Chair:** Would you withdraw.

**Mr Harnick:** You will have to show me in the standing orders where it says I have to withdraw at a committee. I do not think it is in the standing orders. If you can find it, I will withdraw it. But the fact of the matter is, this is nothing more than a publicity campaign for this government, which comes in here and does not tell us the truth. Let's just pass the bill and refer it back.

**Mr Winninger:** On a point of order, Mr Chairman: I heard Mr Harnick, the member for Willowdale, quite clearly say that Mr Morrow had misrepresented the truth, or words almost to that effect. I suggest that he be asked to withdraw that remark in accordance with the standing order that is about to be referred to.

**Clerk of the Committee:** My understanding of the standing orders, and I will check this, is that while Mr Harnick can be asked to withdraw it in a standing committee, the only way to censor Mr Harnick would be to report it to the House.

Interjections.

**Mr Harnick:** If Mr Morrow would now like to have a discussion with me outside, I would be delighted to have a discussion with him.

**The Chair:** We will call a five-minute recess to see if we can work this out.

The committee recessed at 1610.

1617

**The Chair:** I call this meeting back to order.

**Mr Chiarelli:** I want to make a number of points starting with paragraph 1 of the subcommittee report of Tuesday, November 19, 1991. Last week this committee met as a subcommittee and looked at our agenda over the immediate future. Clause 1 says: "Clause-by-clause consideration of Bills 28 and 29 will be scheduled for 25 November 1991. No witnesses are to be scheduled."

I would like to address the issue, "No witnesses are to be scheduled," and ask how the committee whip, the committee chair and the committee clerk could permit that particular provision to be discussed and adopted last week and come in today, with virtually no notice, with a list of six or eight people who supposedly have either volunteered to come or who have been requested to come. There is complete, total incompetence on the part of the committee and the Attorney General's office in openly discussing last Tuesday the fact that no witnesses are to be scheduled. How could these be gathered together in less than a week and presented to us on what is at best an ad hoc basis? It is done in the guise of public participation.

I want to compliment Mr Harnick for having the whips investigate this particular issue and to table with this committee a letter from a representative of the Canadian Bar Association—Ontario. It indicates that, no, they did not ask to come before this committee; in fact they want this



committee to proceed to clause-by-clause and adopt the bills immediately.

Last week in the Legislature we dealt with six bills from the Ministry of the Attorney General. We debated them, voted them and approved them. As a matter of fact, during debate on the last bills, Bills 28 and 29, which were being debated concurrently, the parliamentary assistant to the minister was filibustering his own bill. Both opposition parties were so co-operative in voting all the Attorney General's bills that in fact at 5:30 or 5:25 we were ready to complete the debate, vote on the issue, and this government had nothing on the order paper to debate or discuss or bring forward. The parliamentary assistant was relegated to filibustering his own bill to take up the time of the Legislature and the legislators and all the staff people for over 30 minutes because they did not properly order their business. In fact, when I hear government members stand up and say, "The opposition is delaying legislation and we can't get anything through because of the opposition," we passed or voted on and approved six items of business and they had to filibuster their own bill.

In this particular instance the government has no amendments to move on these class action bills. The opposition has no amendments to move. The stakeholders, I am sure, have no amendments to move; they wrote the bill. In fact, one has to ask, "Why is this taking place?" It is taking place because this government, this ministry or this parliamentary assistant wants to endear himself to the legal profession. He wants to invite these people to come in to have a love-in for this legislation, which in fact was drafted and presented by Ian Scott, the former Attorney General.

This legislation would have been approved the first week this government took office had you brought it forward for first, second and third reading, yet you waited 14 months to bring it forward. You have waited 11 months since first reading to bring it forward for second and third reading. The opposition agrees. We have no amendments. It is a great bill. It is long overdue. We would have come in here today and voted approval of this bill, which we are still prepared to do.

**Mr Harnick:** Can you adjourn your remarks for a moment?

**Mr Chiarelli:** I will in a minute. I want to get my remarks on—

**Mrs Mathysen:** Couldn't you save them for the next bit of propaganda?

**Mr Chiarelli:** I really think there were some strategic decisions being undertaken by the government of undefined nature, which leads us to merely speculate. We thought as a subcommittee we were dealing with the issues in an open, upfront manner. You indicated to us, the committee whip and the chairperson, that no witnesses would be scheduled. We indicated incidentally at the subcommittee hearing that we were prepared to pass the bill right away. We did not even want to have it come back to committee. We were even wondering in the House the day this was given second reading why it was referred to committee. We would have passed it in the House the same day.

It raises a lot of questions. The letter that Mr Harnick has about the reason for wanting to go into soliciting additional comments from the stakeholders raises a lot of questions. It raises questions about the openness of this government, about the motivations of this government, about the motivations and the openness of the parliamentary assistant and the committee whip, and the questions have not been answered up to this point.

I understand there have been a few conversations going on among some of the committee members and there might be additional proposals forthcoming to deal with this particular issue, so we are all ears, Mr Chairman.

**The Chair:** Thank you, Mr Chiarelli. I might remind you that the subcommittee report is open for debate and amendments.

**Mr Winninger:** I am quite shocked that the member for Ottawa West would be so opposed to public consultation. I doubt that his party is equally opposed to public consultation.

In any event, in the interests of compromise, I would indicate that the Attorney General did receive three letters, one from the Canadian Bankers Association, one from Parkdale Community Legal Services and one from a law firm in Toronto, Koskie and Minsky, all of whom were advised that they would have an opportunity to comment after second reading of the bill.

In the interests of fairness to these three specific associations, one being a law firm, it suggested that we hear from Parkdale Community Legal Services which is in fact I understand, available to make a presentation to this committee and that we accept written submissions from the law firm of Koskie and Minsky and the Canadian Bankers Association. This would certainly serve the interests of the kind of public consultation that such an important piece of legislation merits. I hope my colleague the member for Willowdale and my other colleagues would be prepared to accept this kind of compromise.

I might just add one note. There may be other organizations that may wish to appear as witnesses on an unsolicited basis, and I am equally confident that my friends in the opposition would not oppose such presentations from unsolicited organizations.

**Mr Chiarelli:** I just have a very brief comment to make, and that is I am glad to see this government is setting a new precedent, and that new precedent is that there will be public hearings every time there are three written requests for public hearings. That is basically the conclusion we must take from Mr Winninger's comments. We will duly make note of the fact that every time we have a piece of legislation and there are three written requests to have public hearings, this government will accede to that request and grant the request to those particular individuals, and all committees will therefore be having public hearings with such requests in the future.

**Mr Harnick:** I have listened to what the parliamentary assistant has said and I have no objection to having the brief representations provided by those people who want for whatever reason to put on the record their position, and certainly any other groups of unsolicited individuals who wish to appear here briefly to put their submissions on the

record. I say this because I have the assurance of the parliamentary assistant that there are no amendments being contemplated in so far as Bill 28 and Bill 29 are concerned. I know that if there are to be any amendments contemplated, they will be before this committee and will provide anyone who wishes to make submissions the opportunity to do so.

**The Chair:** Thank you, Mr Harnick. Mr Morrow?

**Mr Harnick:** May I say one other thing.

**Mr Morrow:** No.

**Mr Harnick:** I am just going to apologize to you, Mark.

**Mr Morrow:** Oh, go ahead by all means.

**Mr Harnick:** I do not want you to report me or anything like that. I will withdraw the remarks I made a short while ago.

**Mr Morrow:** I accept that. Thank you very much, Mr Harnick. I want to basically concur with what Mr Harnick and Mr Chiarelli were saying, that we short-list the witnesses. I hope we have an agreement on that point.

**The Chair:** Mr Winninger, could you clarify what you said we would be having.

**Mr Winninger:** Certainly, Mr Chairman.

**Mr Harnick:** Can you also confirm if there are amendments?

**Mr Winninger:** First of all, I can confirm that my understanding is that Parkdale Community Legal Services is available to make an oral presentation to this committee and wishes to do so.

**The Chair:** Will that be tomorrow?

**Mr Harnick:** Are they here now?

**Mr Morrow:** Ministry staff is here now as far as I know.

**Mr Harnick:** Is anyone here from Parkdale?

**Mr Morrow:** No.

**Mr Winninger:** Perhaps while we are waiting for ministry staff to come back in, we can revisit Parkdale momentarily. The Canadian Bankers Association and the law firm of Koskie and Minsky have expressed an interest in commenting on this bill following second reading. However, my understanding is that they are not available to make an oral presentation but could make a written submission. That is the proposal. As far as Mr Harnick's comments regarding amendments are concerned, I am unaware of any amendments proposed to this legislation. If, as the member for Willowdale observed, some amendments are suggested by the deputations we hear from, then those will have to be considered in the normal course.

1630

**Mr Harnick:** Certainly if there are any amendments being contemplated, those parties which had the opportunity to in fact write this bill should be given an opportunity to make submissions about those amendments, I would think. Certainly far be it from me to preclude them. I know that certainly the government coming in here today offering to consult with people even though there is nothing that is being contested here would surely not close down the consultation process if there were to be a change in the act.

**Mr Winninger:** I think we have certainly covered that contingency because we have left the list of delegations open-ended, and by leaving it open-ended those delegations that wish to make further submissions will not be precluded from doing so.

**Mr Harnick:** Is it also my understanding then that after we hear from Parkdale we will complete clause-by-clause?

**Mr Chiarelli:** On a point of order, Mr Chairman: There was a motion on the floor to adopt the subcommittee report. Mr Morrow moved an amendment to that motion. What is the status of Mr Morrow's amendment motion?

**The Chair:** Mr Morrow, have you withdrawn your amendment, according to what Mr Winninger has said?

**Mr Morrow:** Yes, I have withdrawn my amendment and gone with, I gather, a new one by Mr Winninger.

**Mr Chiarelli:** If that amendment is withdrawn, we then have a motion to adopt the subcommittee report as it is.

**The Chair:** Unless we have another amendment.

**Mr Chiarelli:** Okay, unless there is another amendment. But in that context, I think we want to also address what happens to the balance of the items on the subcommittee report if we adopt an amendment to my motion, because I think that is very relevant. That is, when will the advocacy bills proceed; what will be the process; what will be the first day of hearings, etc? I think we have to clarify that, because this subcommittee report that was presented contemplated one day, that is today, on class actions, and we were contemplating the various ministers starting tomorrow with respect to their briefings on the advocacy legislation. I think it is important that we clarify what is happening with the rest of the agenda that is the subject of the subcommittee report.

**The Chair:** Right. As soon as we are done with Mr Winninger here, there are no dates set for Bills 7 and 8. That will be discussed after the adoption of the subcommittee report. There are no dates right now in the report.

**Mr Chiarelli:** I realize there are no dates, but the subcommittee report indicates 25 November 1991 for the class action, and although it may not be in the actual report, there was certainly an understanding that the advocacy legislation would start the following day, namely, Tuesday.

**The Chair:** Right. We could not get any ministers scheduled for tomorrow. So the earliest we could get a minister in here would be next Monday.

**Mr Chiarelli:** I will come back to this again once we have an amendment on the floor.

**Mr Morrow:** I do have a new amendment I would like to put forward.

**The Chair:** We are dealing with Mr Winninger's right now.

**Mr Morrow:** That is what I am dealing with. Is his an amendment? That is what I am doing.

**The Chair:** Is it an amendment, Mr Winninger?

**Mr Winninger:** I believe it is, yes, procedurally.

**Mr Harnick:** Can we hear exactly what the amendment is?



**Mr Morrow:** Can I put the amendment on then, Mr Chair?

**The Chair:** Mr Morrow, would you like to put the amendment?

**Mr Morrow:** I move that starting today we deal with class actions by having the ministry staff here to brief us. Tomorrow we hear from the one group, have two written submissions and move into clause-by-clause.

**Mr Harnick:** One group for how long? Five minutes or 10?

**Mr Morrow:** I would say the normal time is up to 30 minutes.

**Mr Harnick:** Let's do 15 minutes and then go into clause-by-clause.

**The Chair:** Are we negotiating or are we making an amendment?

**Mr Morrow:** Let's make the amendment. We do not negotiate during amendments.

**The Chair:** What is it?

**Mr Morrow:** I would say obviously, because each caucus would like to ask for time, a 15-minute presentation time and then a 15-minute question period time.

**Mr Poirier:** Before you make an amendment, I have a question. Last week at caucus I asked the whips to look at tomorrow because of the Ontario Federation of Agriculture convention this week in Mississauga. From what I hear about your proposal for an amendment, it does not seem this request has gone back to the whips and gone back to you.

A lot of our members will be at the OFA convention. Tomorrow afternoon our entire caucus is hosting a time at the convention in the Delta Inn, Mississauga. I brought that to the whips' attention. I wanted to make sure other caucuses were contacted. I do not know when your caucus is doing it at the OFA. I know ours is tomorrow afternoon from 4 until 6, and that will prevent me from asking a lot of my colleagues to replace me. That is why I wanted to ensure we will not meet tomorrow, to be able to do the OFA convention. If you are going to do that, this is complicating things a bit here.

**Mr Harnick:** So why do we not defer it all till next Monday?

**Mr Chiarelli:** Defer it to January. You are not interested in getting stuff through quickly.

**Mr Morrow:** What are you suggesting then, Mr Poirier? What would you like us to do?

**Mr Poirier:** I do not mind working today, but technically speaking, it will be darned complicated tomorrow. It is not that I do not want to, but most members of the caucus who have a rural interest will be there.

**Mr Chiarelli:** In view of the difficulty in scheduling ministers for the advocacy legislation perhaps, following Mr Poirier's lead, what we can do is—I am concerned about the ad hoc nature of what we are doing. We are talking about a major piece of legislation. We assumed it was going to go through clause-by-clause. If people want to come in and do submissions, why do we not do it properly? Why do we not schedule them? Why do we not firm it up? Why do we not simply defer the class action presentations until next Monday when we can have some time to do it professionally? As far as the advocacy legislation is concerned, put it into the following week.

**The Chair:** Could we move for a 10-minute recess? I could have the subcommittee stay and we will discuss this and try and work it out.

The committee recessed at 1638.

1643

**The Chair:** I call the meeting back to order.

**Mr Chiarelli:** I withdraw my motion to approve the subcommittee report which was adopted last week by the subcommittee and I move adoption of a new subcommittee report as a result of a subcommittee meeting held earlier today. I would ask the clerk to read the contents of the new subcommittee report.

**Clerk of the Committee:** "Your subcommittee met on Monday, 25 November 1991 and agreed to the following:

"Submissions and clause-by-clause consideration of Bills 28 and 29 will be scheduled for December 2 and December 3, 1991. Should government amendments be tabled with the clerk, further groups may be given the opportunity to appear before the committee."

The rest of the subcommittee report is as was read before.

**The Chair:** Mr Chiarelli has moved the adoption of the subcommittee report.

Motion agreed to.

**The Chair:** Having no further business before the committee, I move adjournment until Monday, December 2.

The committee adjourned at 1644.

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First Session, 35th Parliament

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 2 December 1991

The committee met at 1538 in committee room 2.

### CLASS PROCEEDINGS ACT, 1990

#### LOI DE 1990 SUR LES RECOURS COLLECTIFS

Consideration of Bill 28, An Act respecting Class Proceedings / Projet de loi 28, Loi concernant les recours collectifs.

### LAW SOCIETY AMENDMENT ACT (CLASS PROCEEDINGS FUNDING), 1990

Consideration of Bill 29, An Act to amend the Law Society Act to provide for Funding to Parties to Class Proceedings.

**The Chair:** I would like to remind everybody that we have Michael Cochrane from the Ministry of the Attorney General to answer any technical questions should they arise.

### PARKDALE COMMUNITY LEGAL SERVICES

**The Chair:** Welcome. Could you please identify yourself for the record and then proceed. You will be given 15 minutes for your presentation and then 15 minutes for questions and answers, shared equally among all three caucuses.

**Ms Gordon:** I am Phyllis Gordon, the clinic director at Parkdale Community Legal Services. This is Ray Kuszelewski, the staff lawyer in the landlord and tenant division, and Bart Posiat, the community legal worker in the landlord and tenant division. We probably have more than 15 minutes of commentary. However, we will try to be as quick as we can. Essentially we would like you to consider three different amendments to the legislation of Bill 28 and Bill 29.

The first, the one we are most concerned about, is to ensure that Bill 28 will apply to summary proceedings under part IV of the Landlord and Tenant Act. The second issue for us is the right to appeal to Divisional Court, and our concern about the financial cutoff. Above \$3,000, you have an automatic right to appeal; under \$3,000 it is with leave, in the landlord and tenant context in particular. The third issue is with respect to Bill 29. We would like you to consider an amendment which would ensure that there is community public representation on the committee of five that will administer the funds under Bill 29.

The first issue we would like you to consider is a change to Bill 28 in section 1, the definitions section. This would be a very simple amendment which would say, "'Proceeding' includes an application under part IV of the Landlord and Tenant Act."

The reason why this is necessary is that by clause 37(a) of Bill 28, part IV will not apply because there is something called a "representative action" in part IV of the Landlord and Tenant Act. Perhaps I should step back one

bit and explain that part IV of the Landlord and Tenant Act applies to residential tenancies, and we are looking for access to class proceedings on behalf of tenants who are perhaps the most difficult people to bring together for litigation. It is one of the groups with the most extensive needs in different sectors of Ontario society.

But by virtue of clause 37(a), tenants will be stripped of the right to apply for a class proceeding action because this act does not apply to the proceeding that may be brought in a representative capacity under another act. The Landlord and Tenant Act has section 119, which on its face is a representative action:

"119. Where more than one person has a common interest in respect of an application under this part, one or more of these persons may be authorized by a judge of the county or district court"—read General Division—"in which the premises are located to make or defend an application on behalf of, or for the benefit of all."

The problem is that the courts, with their judicial conservatism, have taken all meaning out of this section and in fact have relied on the old kinds of hesitations about class actions. So this section, by virtue of judicial fiat, has become meaningless for tenants and landlords.

There are cases in point which have simply said this cannot possibly apply to the situation where there are different individual contracts applying. The kind of concerns that the traditional bench has looked at, in looking at landlord and tenant representative applications, are precisely the wrongs which section 6 of the class proceedings bill is trying to get rid of. We believe these sections are as pertinent to landlord and tenant as to any other kind of litigation in the province.

There is a second stumbling block for tenants and for the litigators of tenants and, I might add, for landlords. Although we are not here speaking on their behalf, we have certainly, in our experience in dealing with them, discovered that both landlord litigators and tenant litigators are constantly befuddled by the lack of application of the rules of court to the summary proceedings. We are not taking on all of that summary proceeding issue today. What we are suggesting to you, though, is that, in a complex action involving hundreds of thousands or potentially millions of dollars, the rules of court should apply. That is another reason why we want this legislation, so that the rules of court do apply.

Bart and Ray can speak to the kinds of actions we are talking about, but essentially they are large buildings where disrepair is an issue. I am going to rely on these two men to give you the real nuts and bolts of why this is so critical. I am talking more about the legal issues right now.

The important issue is the number of buildings that do not get represented. In terms of legal energy, Parkdale has by far the greatest workforce, with up to five students, two

community legal workers and a lawyer to handle a case. We can only take on about one building at a time. There are hundreds of buildings in the province which would benefit from class actions.

Bart will talk to you about the organizing difficulties. First, I would like to point out as well that it is our information that at both the Ontario Law Reform Commission and the committee of the Attorney General, the sort of committee with professional lawyer types on it that led to the development of this bill, they did not really look at the issue of landlord and tenant matters in any depth.

How could tenants lose by not being part of this proceeding? First, there is a counterproposal that says you should wait and amend part IV; the whole thing needs an overhaul. We suggest we will be waiting for years if that is the case, and we cannot afford to wait that long.

We lose the advantages of subsection 31(1) of the Class Proceedings Act with respect to costs awards, which guides the court in terms of when it should award costs. We lose the contingency provision of section 33 and the contract between a solicitor and client in section 32 of Bill 28. Both of these will assist the private bar in taking on this kind of work and increasing access to justice.

The psychological or court cultural impact, we believe, of having landlord and tenant matters under the Class Proceedings Act will be something that might be measurable only to those of us who are there. But these cases are not normally taken very seriously by the courts, we regret to say, and require greater attention and concern by the judiciary.

What are the advantages of having rules in effect prior to starting an action? Bill 28 provides sufficient flexibility to arrange the proceedings according to its own needs by a judge with counsel, but we need the framework of known rules, procedures and expectations that Bill 28 provides. If we leave it simply to the judicial discretion of the summary application judge, we believe we will get caught up in months of legal wrangling about the process.

One of the buildings that has been featured most prominently in the press over the last six months is West Lodge—it had already gone to the Supreme Court of Canada many, many years ago on parallel issues and is back in the courts again. Bart and Ray have been very involved in it. There were approximately 720 units. Some 35 people have benefited from a very powerful decision in what the other 690-odd tenants have not been able to benefit from, and had there been a class action, that ruling would benefit all the tenants in the building.

Perhaps we cannot see the use for it right now, but section 23 allows statistical evidence to go before the court, and there may indeed be landlord and tenant matters in the future where statistical evidence would be useful. We are simply looking for a fair and more sophisticated process for tenants, and we believe landlords in these major money cases would certainly benefit.

It is my understanding that the interim draft report on the law of standing, which is considered to be parallel legislation in many ways—and this is an interim draft report at the current time—has included applications under part IV of the Landlord and Tenant Act. We are looking for consistency, which would be critical. The same policy we

are arguing here was adopted by that committee in its draft recommendations. I stress that it is draft.

The other major disadvantage if tenants and landlords are not on the class proceedings bill is, we believe, the very broad discriminatory effect that not being included in Bill 29 will have. The access to the fund of Bill 29 is as important for tenants as it is for any other group, and you must remember that Bill 29 not only pays for disbursements but, once that committee has decided that disbursements should be awarded, there is an indemnification of costs. We are not looking at this only from the legal clinic point of view but also from that of tenants across the province, who now are denied any kind of legal assistance because they cannot afford to carry the case on their own. Access to Bill 29 would have a tremendous impact for them.

#### 1550

An argument has been made that our proposal will upset the balance that currently exists. We respond to that by saying, first, that there really is not currently much of a balance at all in terms of resources between tenants and large landlords in understanding the legal system or in the resources of it. Second, section 119 of the current Landlord and Tenant Act states the principle we are asking you to adopt for tenant matters and to give some procedure to. It has been judicial conservatism that has upset and undone that balance and that remedy. So we are asking really for no more than the procedural rights that are now recognized by the statute and that have been taken away, and for the positive access aspects of Bill 28.

We have a subsidiary issue which deals with the appeal rights—this is the second concern—under section 30. We believe in general that there should not be a monetary cutoff point as to whether one has an automatic right to appeal. We find it an odd piece of legislation that says that if you have been awarded more than \$3,000 you get an automatic right to appeal and not otherwise.

There are two specific points with respect to landlord and tenant matters. Most often, awards on disrepair are less than \$3,000, and Ray and Bart can explain why that is the case, but presently tenants under part IV do have an automatic right of appeal to the Divisional Court, no matter how small the award. The one bit of inelegance our amendment would require, I suppose, we consider the most important thing you allow us, but there is a secondary issue on appeal rights. I have a complicated draft—there would be a subsection 30(12), I suppose—that basically states that in a proceeding under part IV, where an individual class member is awarded less than \$3,000, the individual class member, the representative plaintiff or the defendant may appeal to the Divisional Court from an order, notwithstanding subsections 30(9), (10) and (11). That is the one issue we see as a bit tricky.

The other issue I will speak to quickly—but one that is critical for the record and we would like your very serious attention to it—deals with Bill 29 and section 59b. Section 59b sets up the five-person committee that will in fact control who will effectively be able to take class actions in the province. This committee, as presently structured, is one person appointed by the foundation, one by the Attorney General and three who are agreed to jointly. We would



like you to seriously consider an addition to clause 59b(1)(c), where it says, "three members appointed jointly by the foundation and the Attorney General," and ask that you consider adding, "one of whom shall be employed by a recognized Ontario public interest group and one of whom shall be employed at a community legal clinic funded by the Ontario legal aid plan."

What we are asking for is to have the access to justice enshrined in this piece of legislation so that two voices out of five would represent the community that is most likely to benefit from the Class Proceedings Act and would have the most experience with the difficulties of bringing these actions and with the financial issues, from the community group's point of view, that must be reviewed by the committee, always remembering that because this Bill 29 is as powerful as it is, the disbursement is perhaps minor.

It is the right to indemnification from costs that is the real door to access to justice for people coming in under section 59 and trying to access this fund. It is a very odd provision in some ways because it removes from the courts the consideration of costs in the cases where the five members of the committee have approved an action. We believe very strongly that the Attorney General should ensure that at least two of the five voices come from people who may not normally be considered capital-P professionals but in many ways are certainly very professional in understanding the nature and the importance of this litigation.

Those are my three points. I know I have gone way over my time and I am sorry for that, but it is important.

**Mr Posiat:** I do not know how much time I have left, Mr Chair. I will try to make it very brief and you can cut me off when the time is expired.

I would like to expand a little on the one example Phyllis has given, which is an interesting example because it happened recently. It is 103-105 West Lodge, a huge building, 720 apartment units. The disrepair situation in that building is just horrendous. The tenants have legal recourse and a legal course of action under section 96 of the Landlord and Tenant Act, but without some measure of class action or group representative action, what kind of tenants are able to take advantage of that under the present system?

These are people on very low incomes, many different language groups, recent immigrants, single mothers, people on welfare, people who are just trying to get by, especially under the present economic circumstances. These people cannot all afford to go to court, so after a lot of effort, finally a group of them—it was originally a group of about 70 people—was able to file individual applications. Of course, by the time it went to court, some people had fallen by the wayside. Eventually we won the case and it is a very good judgement. However, the landlord is appealing it, precisely under section 119, which says that tenants can take the representative group action, because that is a very vague section that has been interpreted in the court in different ways.

There is an imbalance in the present justice system for people on low income. There is also an imbalance with regard to those who represent people on low income, such as legal clinics, in the sense that for us to file a massive

group action, we have to make individual applications in court and we simply do not have the resources, nor does the Ontario legal aid plan. I met somebody just today on my way over here who cannot even get a lawyer—this is a different kind of thing—in a criminal case. I do not know why, but the man is on welfare and he said: "I can't get a lawyer. They can't give me one." There are not endless amounts of money available under the legal aid system, and also, even if there were a group action, a representative group action would be much more effective.

Tenants and people on low income generally are at a disadvantage at present under the justice system. This could be corrected by a representative group action where one person or a few persons could represent everybody else who is living under the same conditions, such as at 103-105 West Lodge. So (a) it would be more cost-effective and (b) it would correct an imbalance for people who are disadvantaged who would be able to be represented more effectively in the justice system.

#### 1600

**Mr Kuszelewski:** If I might speak very quickly to the procedural methods that are available to us now without the class proceedings, although section 119 of the act says quite clearly that representative actions can be taken, the courts have told us very clearly they cannot be taken for the simple reason that each tenant has an individual contract with his or her lawyer, so one cannot represent those differences in a class proceeding. That is how section 119 has been taken away from tenants.

What does that do for the tenants? As Bart said, it means we have to file individual applications for each tenant. We have come up with a method of filing where we just stack all the tenants' names on to one application. We then have to provide the same number of affidavits in support of that application just as though we were filing individual applications, and then we hope the other side does not try to have the application stayed because of that procedural difference.

In the West Lodge case, we did just that. We filed 35 people on one application. We managed to get through the entire course of the proceedings because the judge agreed with us it was an expedient way to do it, but now we are faced with an appeal to the Divisional Court, where one of the grounds of appeal is that we took advantage of a section that has basically been ruled not to apply, so there is a chance we will lose on that technical point.

Besides the difficulty of bringing in every tenant and swearing an individual application to an issue such as disrepair—and I can tell you disrepair is the largest issue that is of concern to us, because that is the issue where the class generally comes together, the issue of disrepair in their units or in their building—besides the fact of bringing them all together, swearing out affidavits in any number of languages, with affidavits in support because of the translations that are required, we have to bring all of those people to court. We cannot just put one person on the witness stand and say: "This is the way this building looks. This is the way these units are repaired or disrepaired." We have to put every one of those people on the stand. We



have no form of representative action whatsoever available to us. In that sense, in the case of West Lodge, it makes it identical to taking 35 individual applications. Although they have one file number, we have had to present the case basically 35 times to the judge.

We do not think that is a fair way of expending resources. The representatives are those types of representatives who are dealing with scarce resources, and we have to pick and choose very carefully what we decide to do. An act such as the Class Proceedings Act would certainly make the practitioner's life quite a bit easier and in essence streamline what goes before the courts. Those are our submissions on that issue.

**The Chair:** Thank you very much. Any questions or comments? Mr Morrow.

**Mr Morrow:** I want to thank you for coming. I was at a function on the weekend with a couple of friends from McQuesten Legal and Community Services, Peter Cassidy and Denise. They said to say hello.

**Mr Phillips:** Good party, eh?

**Mr Morrow:** Actually, it was not.

You wanted to amend clause 59b(1)(c) in Bill 29. Can you give that to me again, if you would not mind?

**Ms Gordon:** The words we are proposing to add on are as follows—we are describing two of the members that fall under the three who are jointly appointed—"one of whom shall be employed by a recognized Ontario public interest group and one of whom shall be employed at a community legal clinic funded by the Ontario legal aid plan."

**The Chair:** Further questions or comments? Seeing none, on behalf of the committee, I would like to thank you for taking the time out of your busy schedule today to give your presentation.

#### KOSKIE AND MINSKY

**The Chair:** Our next presenter will be from Koskie and Minsky. I would like to thank you for being here today. You will be allowed half an hour for your presentation. That will consist of 15 minutes for your presentation and up to 15 minutes for questions and comments from each caucus. Please identify yourself for the record.

**Mr Zigler:** My name is Mark Zigler and I am a lawyer with the Koskie and Minsky firm in Toronto. I appear before you not just on behalf of myself. There is a group of labour lawyers who tend to represent trade unions who have some concerns about this bill. We met informally, and I am conveying some of their concerns as well. I left a brief handout with the clerk.

There are only two major issues I wish to address with regard to Bill 28. The first is with respect to allowing persons or entities other than individuals to act as representatives of a class. Often, particularly in the type of litigation we are involved with, a trade union or an unincorporated association, even a ratepayers association or some association like that, may be a better representative of a class than trying to put forward one or two individuals as representatives of a class. That way it is an organization that is accountable to the class. It usually rep-

resents most of its members anyway and can communicate with them a lot better.

The first point—I will get into in a bit more detail in a minute—pertains to amending the bill so it is clear that the people who can be appointed as representatives of a class under the bill need not be restricted to individuals and, in the appropriate case, it would be open to the court to appoint any form of incorporated or unincorporated association, such as a trade union, but not exclusively that, to represent the members of a class.

The second point pertains to trying to get injunctive relief under this statute from time to time. Among my past litigation was a case involving Varsity Corp, which went bankrupt a number of years ago through one of its subsidiaries, resulting in a group of pensioners losing their health and dental benefits and supplementary health benefits. There was no class action rule, so they sued as 220 individuals but could not get any injunctive relief. Thanks to this bill, if this were to happen again today, at least the group could sue as a class as opposed to having 220 people bringing action.

Sometimes if there is an immediate loss over and above the usual monetary damages, as for an immediate injury, they would try to get injunctive relief. You could not get an injunction under this bill until you went through the entire class certification proceedings and sent notice to everybody, which could take up to 90 days or more. If you needed immediate relief, even temporary relief, from a court on the basis of a class, you could not get it unless the bill were amended to permit a court to grant an interim certification and interim relief, subject to the usual rules of obtaining interim relief.

To get into detail on the first point, the bill here permits the certification of persons to represent a class. My concern is that unincorporated associations under section 2 are not necessarily persons, so the bill should be amended to permit an unincorporated association or any other artificial entity, whether it is a corporation or a trust, to represent the class. We now see this happening when, in a form of representative proceeding, you have debates about employee benefits or pension surpluses when a pension plan is being wound up. There are a number of such cases before the courts.

This bill will certainly allow the employees to proceed as a class with common interests and we will not have debates about individual actions and individual damages. It is a good bill in that respect and its intent is good. The only technical amendments I would suggest are the two I have addressed.

#### 1610

There is a third small concern, and I do not know what impact it will have on practitioners. It deals with the contingent fees and multipliers permitted under this statute. I have a concern that there will be pressure upon various members of the bar to take cases on a contingent fee basis, particularly those involving things like pension funds and so on. That may well be the intent of the bill and I think that is fine to a degree.

The concern I have is that contingent fees may not necessarily be the best way of dealing with litigation



where you are dealing with assets in trust. It may be that if you are going to permit contingent fees in those circumstances, the bill should explicitly state that contingent fees, if they are awarded, are to be awarded by the court out of the trust, assuming that a policy decision is made to go ahead that way, or else not permit contingent fees in those circumstances.

Sections 33 of the bill permits contingent fees. If there is going to be a reference to them, perhaps legislative counsel and the Attorney General should consider the issue of how you deal with contingent fee arrangements where you are dealing with rights in a trust and assets of a trust.

Subject to any questions you may have, that is really all I have to say in terms of the bill.

**Mr Harnick:** Explain to me, in terms of an unincorporated association being a representative plaintiff, what would happen in the case of a costs award. How can you enforce a costs award against an unincorporated association?

**Mr Zigler:** In effect, you have unincorporated associations right now who are given the status to act as parties in things like applications for judicial review under the Judicial Review Procedure Act. Unions, if they have an award of costs against them, pay the costs. If you had to sue a union right now you would sue a representative of the union.

**Mr Harnick:** So why cannot a representative of the union be the representative plaintiff? Does that not do the same thing for you?

**Mr Zigler:** Such a person can be. The difficulty would be that the action is then in the hands of an individual.

**Mr Harnick:** Except that you and I know that the union is standing behind the person.

**Mr Zigler:** Usually that is the case.

**The Chair:** Any further questions or comments? Seeing none, on behalf of the committee I would like to thank you for coming out today and taking time out of your busy schedule to be here.

**Mr Morrow:** Is it my understanding that we are to move into clause-by-clause tomorrow?

**The Chair:** Right.

**Mr Morrow:** Can I ask that we have unanimous consent to do it now, but can I also ask that we have a 20-minute adjournment before we do that?

**The Chair:** Do we have unanimous consent to move to clause-by-clause today after a brief recess?

**Mr Morrow:** We can do it now if you want, it does not matter. I just thought there might be a couple of things we might want to look at. If you want to move into it now, I do not have any objection to that.

**Mr Chiarelli:** I understand that no party at this point is going to be moving an amendment.

**The Chair:** Not as far as I know.

**Mr Chiarelli:** Why not simply proceed with clause-by-clause?

**Mr Harnick:** Unless you tell us why you want 20 minutes. What is it you want to look at?

**The Chair:** Do we have unanimous consent to move to clause-by-clause today? Agreed? Immediately? You can ask for 20 minutes. On a vote.

**Mr Chiarelli:** Are you concerned you cannot carry the votes?

**Mr Morrow:** I am always concerned about that.

**Mr Chiarelli:** We give you our undertaking that we have no amendments.

**Mr Morrow:** Let's move into the clause-by-clause.

**The Chair:** On Bill 28, are there any questions, comments or amendments? Seeing none, shall sections 1 to 39 carry?

Sections 1 to 39, inclusive, agreed to.

Title agreed to.

Bill ordered to be reported.

**The Chair:** On Bill 29, are there any questions, comments or amendments?

Seeing none, shall sections 1 to 5, inclusive, carry?

Sections 1 to 5, inclusive, agreed to.

**The Chair:** Shall the title carry?

**Mr Chiarelli:** No, I would like to move an amendment to the title so that it is called the Ian Scott Class Proceedings Act.

**The Chair:** Thank you, Mr Chiarelli. Seeing none, the title carries.

Title agreed to.

Bill ordered to be reported.

**The Chair:** Seeing no more business before the committee, we will adjourn until next Monday at 3:30 pm.

The committee adjourned at 1616.

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 9 December 1991

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 9 décembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 9 December 1991

The committee met at 1538 in room 151.

### ADVOCACY ACT, 1991 AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

**The Chair:** Pursuant to standing order 123, the clerk has received designation from the Liberal Party and we will be arranging a meeting with the subcommittee for that purpose tomorrow.

I would like to announce that today we are commencing the consideration of six bills: Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care; Bill 109, An Act respecting Consent to Treatment, and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991. Briefings on these bills will occur today, tomorrow, December 16 and December 17. Public hearings will commence in the recess on a date to be determined by the House leaders and whips.

### MINISTRY OF CITIZENSHIP

**The Chair:** Today we have the Honourable Elaine Ziemba, Minister of Citizenship and minister responsible for human rights, disability issues, seniors' issues and race relations. Accompanying Ms Ziemba are Clem Sauvé,

Trudy Spinks, John DeMarco and Mary Beth Valentine. Minister, will you tell us how you wish to proceed.

**Hon Ms Ziemba:** First of all, I would like to introduce the people who are here with me today. I am sure most of you know the various people, but I would like to do that. From the Office for Disability Issues are Clem Sauvé, senior adviser; John DeMarco, executive co-ordinator of policy and research, and Trudy Spinks, legal counsel on the advocacy project team. Mary Beth Valentine is the manager of the psychiatric patient advocate office and is on secondment to the advocacy project team. Of course, I have my own personal staff with me today: Paddy Kamen, Winnie Ng and a few other people.

What I would like to do is make some introductory remarks, if that is possible. I leave that up to you.

**The Chair:** Sure. Would you like your staff to give a presentation right afterwards or would you like questions and answers?

**Hon Ms Ziemba:** My understanding was that I would make my opening remarks and then there would be an hour's time for questions, retorts and comments. The legal staff are here to then give a policy overview, if that is necessary or required. That is fine.

**The Chair:** If everybody is in agreement, that is the way we will proceed.

**Hon Ms Ziemba:** It is a pleasure for me to be here today with an overview of the advocacy legislation you are about to consider.

We have known for a long time that there has been a consensus within the disabled community and among Ontario's senior citizens that a comprehensive advocacy system is needed. Reports on advocacy for Ontario's most vulnerable citizens have been gathering dust too long. I of course refer to the Sean O'Sullivan report and the Fram report as well.

Ontario has approximately 600,000 citizens, including the frail elderly, who have moderate to severe disabilities. Their impairments may be mental, physical or both. Most of these people can solve their own problems in daily living or have the support of family and friends to assist them. However, some of them do not have support. They are the people we refer to as vulnerable adults. They may be living in institutions or the community and may suffer from neglect, abuse or exploitation. These are our fellow citizens who have been long abandoned and forgotten. If we want to call Ontario's society compassionate and caring, we cannot let this injustice go on.

In his 1987 report, *You've Got a Friend*, the late Father O'Sullivan eloquently stated: "Regardless of physical or mental illness and/or impairment, vulnerable persons must have the power to make decisions and exercise their right of choice. People are people, whether or not they have

identifiable handicaps. The advocacy system is designed to foster a vulnerable individual's sense of dignity as a valuable contributing citizen of Ontario."

The development of a new Advocacy Act will establish a province-wide independent system of non-legal, social advocacy for vulnerable adults. The advocacy system will deal with rights, personal care and systemic concerns. The act provides a new and innovative approach to social policy. It is our conviction that it will go a long way towards addressing some long-standing social injustices that have affected disabled people. It will banish the presumption that because of their disabilities, these people cannot make decisions or carry out everyday tasks.

Advocacy will increase the autonomy of individuals who, because of their disabilities and, in some cases, because of systemic barriers, have difficulty obtaining information, making their wishes known or protecting their own interests through informed decision-making.

When the problem is system-wide, advocates can work with residents' councils so that residents themselves use their collective voice to make positive change. The principle of empowerment is key to this legislation. This act does not take a paternalistic approach. Advocates can listen, they can lobby, they can inform, they can inspire, but they will not make the choices.

Creating a system that will empower vulnerable adults will be an enormous challenge, one that can only be met through the marshalling of new and existing resources.

The Advocacy Act is not intended to dismantle current programs or interfere with the care given by devoted and conscientious families. We understand the supportive role played by family members, friends and care givers. In fact, one of the act's stated purposes is to "acknowledge, encourage and enhance...family and community support for the security and wellbeing of vulnerable persons."

The legislation also recognizes the important role of agencies and individuals already advocating on behalf of vulnerable people. The act will allow the Advocacy Commission to provide grants or enter into contractual arrangements with non-profit community organizations. It will open the door for advocacy on either a paid or a volunteer basis.

Right now, advocacy services are few and far between. Community-based advocacy programs, such as the Advocacy Centre for the Elderly and the Advocacy Resource Centre for the Handicapped, provide legal services. Volunteer groups, such as the Concerned Friends of Patients in Long-Term Care and other patients' rights groups, provide non-legal advocacy. Some hospitals and residential facilities hire their own advocates, but there is concern that this could lead to conflict of interest.

There is also a need for advocacy services that address the culture, religion and traditions of aboriginal people and those from our multicultural communities.

Let me add that the services that do exist tend to be in larger towns and cities. There is no province-wide coverage by any organization, except the psychiatric patient advocate office, which is part of the Ministry of Health. It has provided advocacy in the government's 10 psychiatric institutions since 1983. Our plan is to transfer the PPAO to the Advocacy Commission once it is in place.

Experience shows that vulnerable adults know what they need and that they will be heard more clearly with the help of an advocate. I would like to share with you some examples of the types of situations advocates have encountered.

The first example is a woman with diabetes and poor eyesight, who was also a wheelchair user, who developed kidney problems. The staff in her long-term care institution thought she was complaining unnecessarily and removed her wheelchair, apparently because she often fell. An advocate took the woman's complaints seriously and saw to it that she visited a geriatric specialist. She was diagnosed with two cancerous growths on her kidneys and died four weeks later. The advocate did ensure that the woman received necessary pain medication before she passed away.

The daughter of a woman in a nursing home asked for information about her mother's medication and was refused. The mother was hard of hearing and did not speak English, so an advocate brought in an interpreter for her. She could now tell the staff that she wanted her daughter to have the information. The record showed that woman had been given higher and higher doses of Valium for no clear reason, and she decided to have her medication stopped. With the help of the advocate, who explained the situation and her options, this woman made choices about her own treatment.

A young man applied for a disability pension on his doctor's recommendation. He received notice of a review hearing, but he could not understand the notice because of his disability. He did not show up for the meeting and, as a result, was denied the pension. The very reason he needed the pension, his disability, shut him out of the system. A friend contacted a community-based advocate, who ensured that a new hearing was scheduled and that the man attended.

In another case, a man with a degenerative disease was admitted to a privately owned long-term care institution. He woke up with his breathing passages obstructed, called a nurse and had to wait an hour before she came. This happened several times. An advocate learned that the man's treatment took a long time and the nurses put it off until they were not busy. The advocate explained to the staff that the man was afraid of choking and an agreement was reached so the patient could get a quicker response.

These are cases where an advocate was able to intervene. But sometimes there is no local advocacy service, and no one is called to help. For example:

A recent article in the Toronto Star noted the deaths of 20 people because of the use of restraints. The examples included an elderly and confused woman placed in a Metro area hospital because she had wandered away from home. She was tied into her wheelchair or her bed for almost a month. She eventually strangled on her restraint.

An inquest into the death of one of 23 former psychiatric residents of a boarding home showed they were repeatedly abused and suffered from malnutrition and dehydration. A person who was incontinent was forced to wear urine-soaked sheets. Others were forced to drink from baby bottles. This is how bad things can get for some vulnerable adults.

The very fact of entering an institution can strip a vulnerable person of the right to make choices. Decisions such as when and how to dress, bathe and eat are highly



regimented. In institutional settings, many people lose the power to control their own lives.

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It is not the staff in institutions that are the problem. Most staff are concerned and dedicated people, but they can be caught like their patients in a system beyond their control. All too often, this means patients' concerns may be misunderstood, ignored or simply not believed.

Outside of institutions there are other problems. People with mental and physical disabilities often experience discrimination in hiring practices, housing, transportation and other basic human needs.

The Advocacy Act will create opportunities for people to take control of their lives and transform the conditions they live in. It does not create or extend new rights to vulnerable people. Instead, it helps to ensure they have the basic rights that most of us take for granted.

There is no obligation on the part of a vulnerable person to speak with an advocate. Vulnerable people have the right to be left alone. They also have the right to expect that what they say to an advocate is kept confidential.

The Advocacy Act requires that information about clients be kept confidential except when vulnerable people give authorization. It provides a narrow set of circumstances in which an advocate may choose to reveal information, for example, in the course of legal proceedings or to prevent a crime of violence.

Central to the new advocacy system will be a commission operating at arm's length from the government. The majority of commissioners will be individuals who are or have been disabled, and they will be selected through a process that provides an unprecedented opportunity for community involvement. The commission's membership will be fairly balanced between the number of men and women, and it will reflect the geographic and cultural diversity of Ontario.

Grass-roots consumer organizations for seniors and people with disabilities will nominate eight of the 10 members of an appointments advisory committee. The committee will screen, interview and select prospective commissioners for my consideration.

Once appointed, the commission will have a broad mandate and the latitude to develop the guidelines for the advocacy system. The commission's responsibilities will range from promoting the rights of disabled persons to establishing qualifications for advocates. It will recruit and train staff and develop the policies, procedures and codes of conduct.

The commission will encourage vulnerable people to advocate for themselves and form mutual interest coalitions. One way this will happen is by working with residents' councils in long-term care facilities.

The act allows the commission to form advisory committees to help it make decisions. These committees could take a number of different forms. One option would be committees for special interest groups such as family members, service providers and care givers. Another option would be to have stakeholders representing those with different types of disabilities, possibly on a regional basis.

Advocates will not provide legal services or represent their clients in court proceedings. They will, however, ensure that legal assistance is made available when needed or requested.

The act describes three forms of advocacy.

Rights advice will come into play when vulnerable persons could lose their right to make decisions. For instance, anyone who becomes the subject of a guardianship application under the Substitute Decisions Act must be visited by an advocate.

In these situations, the advocate would help explain the person's rights and options, find out what the person wants and obtain legal counsel, if that is desired. Under the provisions of the Consent to Treatment Act, advocates will also be available to people who are deemed to be incapable of making decisions about medical or psychiatric treatment and who may want to contest that evaluation.

Individual advocacy is meant to help vulnerable persons address specific problems. Advocates will not have the authority to order something done, but they will be expected to vigorously pursue a vulnerable person's wishes through all lawful and ethical means.

Systemic advocacy focuses on problems that go beyond one individual. An advocate working in an institution may discover a regulation, policy or practice is hurting a large number or all of the residents. The advocate will investigate the problem, document it, bring it to light, or help a person or group of vulnerable people do it themselves.

Whenever possible, an advocate will try to build a cooperative atmosphere in which all parties work together to advance the rights of a vulnerable person.

Under the act, advocates will have the authority to enter publicly funded or regulated facilities, such as institutions, hospitals, homes for the aged, nursing homes and hostels. They will not need a warrant and they can enter at any time that is reasonable under the circumstances.

Advocates will also be granted access, with a vulnerable person's consent, to a facility's records on that person. There are some limits to this access. Advocates will not be allowed to search through records or remove some of them that are needed for a person's current care, such as medical charts.

Rights of entry will also be granted for unlicensed boarding homes and similar facilities. Advocates can enter private residences between 8 am and 8 pm, and they are entitled to meet in private with any person they have reason to believe wants or could benefit from their services.

I would like committee members to know that my ministry will listen closely to your recommendations and suggestions, and those of the various organizations and individuals who appear before you. We want to make this legislation the most effective tool for those who are at the most risk.

Everyone is shocked and appalled when people die of neglect or when abusive situations are uncovered. Everyone asks, "Why was nothing done?" Under the proposed legislation, something will be done. Thank you very much for your attention.

**The Chair:** Thank you very much. Could you give us some indication of how long your staff presentations are going to take?

**Hon Ms Ziemba:** It could take 20 minutes. It could take a bit longer.

**The Chair:** Would the committee like to ask the minister questions right away, or wait until after? Questions right away? Mr Harnick, would you rather go now?

**Mr Harnick:** Sure. Minister, I have had, as I am sure other members of the committee have had, visits from various organizations, and one of the areas of concern that seems to come up from organization to organization is the interrelationship between the advocate and members of the family. What happens if we have a person suffering from a disease of some sort where they have problems with their memory, difficulty giving instructions, and the family has been looking after that individual, and that individual, for whatever reason, has to be either temporarily or permanently institutionalized?

The act, without any doubt, talks about the importance of the family, but it really does not deal with the interrelationship between the family and the advocate and the vulnerable individual, and I have some concerns that, because the act does not deal specifically with that relationship, we may run into problems down the line.

Have you had the same kind of requests and concerns, obviously meeting and hearing from the same groups that I have heard, and is there any idea you can give us about making some amendments to protect that relationship or define families' input?

**Hon Ms Ziemba:** First of all, I have to say very strongly that the act is intended to support family and friends and also to help people who do not have family and friends. I often go into my personal things—and I will not today, but I know of many instances where people just do not have the family or friends or care givers to support them and certainly need to have an advocate there. That is something I wanted to stress, because I think it is very important to bring that into the context for the whole act.

We are also here obviously to make this act work, and I say in the very final part of my statement that what we want to do is to have a system in place in our society so that vulnerable people are not abused, neglected or hurt in any way. If there are amendments, if there is a way to strengthen the act to make that happen, that is part of the procedure of a committee hearing and certainly is something we would take into consideration if the wording can define the act so that it strengthens it and helps all members of our society.

What it is supposed to do is to make sure that vulnerable adults get the care that is there. Family and friends are very important. As a daughter of a mother who had Alzheimer's disease, I know that if I had not been there to support and help her, her final stages would have been very difficult, so I feel very strongly about family and friends. I know the role they can play. However, there are people in our society who do not have those people.

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**Mr Harnick:** No question, I agree with you, and it is interesting because the Alzheimer's Society is one of the groups that have consulted me. What they say is that the act in three or four different places says "acknowledge,

encourage and enhance individual, family and community support for the security and well being of vulnerable persons" but they say the act does not set out the next step. I do not know whether it is possible to set out the next step, but what is the authority and how far can the family's wishes, as the controlling group, be maintained before the advocate comes in and takes over from the family? Because you are dealing with a person who may not be able to give the family instructions. You are dealing with a person who, because he cannot give the family instructions, cannot give the advocate instructions either.

What if you end up with a conflict between the family who has been looking after this individual for perhaps a long period of time, and what the advocate will ultimately be saying should be done? And if a conflict develops, how do we resolve that? Is it always resolved in favour of the advocate, or is it resolved in favour of the family? I am not expert in this legislation, but in that regard the act seems to be silent.

**Hon Ms Ziemba:** There are two comments I really have to stress with you. One is that it is not the advocate's wishes that will ever be the utmost, and it is always the vulnerable person's wishes. If the family is acting on behalf of—and I hope you would not use the word "controlling." That is what really frightened me in your statement. "Controlling" is very frightening to myself, who is not vulnerable, but could possibly become so, and any one of us in this room could. I hope a family is working on behalf of and with the vulnerable person and is exercising the things they hope and understand are for the betterment of the vulnerable person. But I hope the word "control"—I know you did not intend it to be that.

**Mr Harnick:** No, that is quite so.

**Hon Ms Ziemba:** I just had to say that, because it does frighten me when I hear those terms being used. I would have to say again, and very clearly, that it is the desire and the wish of this act, and has been the desire for many advocacy groups across the province for over 17 years, that there be an advocacy commission.

The Alzheimer's Society in fact was very instrumental in going before the government of the day, which was 16 or 17 years ago, and out of that came the Fram report. They were consulted at length about what should be in the Advocacy Act and how that would work and benefit and help family members. I know, having gone through the experience myself just a very short time ago so it is very clear in my memory, I would very clearly have liked to have had a commission there to go to for advice and help. The act is to do that, and it certainly would be to the benefit of family and friends to have that assistance.

Again, if there is some way we can strengthen the act in the framework of the terms of the legislation to support the vulnerable adults and to assist family and friends, that certainly will be part of what this committee's work will do. I know, because I have spoken to people individually in this room, that people want the best for vulnerable adults.

**The Chair:** Thank you very much, Mr Harnick. Mrs Sullivan?



**Mrs Sullivan:** Thank you, Mr Chairman. We appreciate your being here, Minister, to discuss some of the issues in regard to this bill.

**Hon Ms Ziemba:** It is my pleasure.

**Mrs Sullivan:** Our party is very concerned about the interrelationship of the three bills and sees, throughout those bills, some inconsistency and confusion which, as we go through this process, it seems to me have to be cleared up.

Our party has suggested that the three bills in total be used as a draft bill for further discussion, because there are significant problems in terms of the overlap and the relationship between each of the bills. Apparently the government has decided not to proceed that way, because we are here. We think that is unfortunate, because we think there is going to have to be a lot of amendments to the three bills. If this entire triumvirate of bills is going to work, the amending process is going to have to be significant and cannot be done in isolation, one bill against another.

You have indicated in your statement that rights advocacy is a right of this bill. In fact, it is not. You understand that it is a part of this bill; it is not written into this bill. The rights advocacy that is included in the Substitute Decisions Act or in the Consent to Treatment Act is implicit in this bill, but there is no specific rights advocacy program included in the Advocacy Act making it mandatory, for example, for people who are subject to mental incompetency hearings or to guardianship, to be identified through this act as having the right to an advocate. I think that is where you see the confusion and the intricacy of the three related pieces of legislation.

We are also concerned, as the Conservatives have indicated, that this act defines "vulnerable people" very broadly. Your opening remarks have indicated that many vulnerable people with moderate to severe disabilities do indeed have the support of family or friends, yet the model you have selected in the Advocacy Act is a very broad one where the drafting of the bill downplays the role of family and friends and agencies. We see that as a problem.

These are the questions I want to direct to you at this point: What other models did you consider in terms of developing the advocacy commission? Why was the proposal, if someone appropriate were willing and able to serve in an advocacy position for a vulnerable person who happened to be a family or a friend, or indeed an agency such as the service agencies that are already for many people providing volunteer support, rejected? I would also like to know what the cost implications are of the advocacy commission on a full-year basis. How many employees are you anticipating when it is fully up and running? What would be the difference in cost had you selected a model where family and friends' participation is specifically defined?

I am also wondering if you would be willing to amend section 7 of the Bill to include specific mechanisms which would enable family and friends to participate in advocacy. I will get to my next questions on the next round.

**Hon Ms Ziemba:** You obviously had a good day in question period. I am going to refer you, first of all, to the

act itself, clause 7(1)(d), "provide advocacy services as required by any other act." We feel that covers not only the other two acts, but any other acts that might eventually come to being and not exclude any that might exist or might be developed in the future.

I also would like to address the issue of the broad terms. One of the reasons we did that is to make sure we did not exclude anybody who might be vulnerable in future or who will fall between the cracks. That so often happens when you do a very defined definition, that you do sometimes have people who actually fall between the cracks, who would be the very vulnerable people we would want to serve and not to leave out. That is a concern of ours.

I do not feel we have rejected agencies and family. We have said very specifically in the act that agencies will be given a role to play if they already provide a service. Family and friends and care givers certainly have a role to play. That has been said very many times in the act. I guess you were discussing the cost to family and friends. There are vulnerable people who do not have family and friends. I have to reiterate that. If a system was put in place with only family and friends providing that advocacy, what about the many whom we are really trying to reach out to who do not have family and friends? That is really a concern.

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**Mrs Sullivan:** On a point of information, Mr Chairman: My question specifically relates to expanding the definitions to ensure that for those vulnerable people who did have family, friends or an agency to support them, the advocacy commission would not necessarily have to kick in in those particular instances. That would be very difficult to do with the wording of the bill now.

**Hon Ms Ziemba:** The act is intended to not—

**Mrs Sullivan:** I understand its intention. I am asking if you would take a specific amendment—

**Hon Ms Ziemba:** I said to you as well that there would certainly be opportunity, if we can strengthen that part of it, and I do not think I am going to reiterate that. This is what the work of the committee is: to assist and make sure the framing of the work will do that.

Because you asked for the cost of family and friends being included, I presumed—and I am sorry if I presumed too far—that meant you were only using a system that would have family and friends and would not provide for the care of people who do not have family and friends. You asked about the cost and we are thinking of a startup cost of \$9 million to \$10 million. It is hard to say what the final cost will be, but we are thinking it could be a little higher as we get into full implementation. It is very difficult at this time to say how many employees we might have when it is very uncertain how many vulnerable persons without family and friends actually will need the service. However, we have always stated that we wanted to make sure there was a system in place that would work well and that would be there for everyone, and not to have a service that could not be in place.

We might find that when we get into certain regions, certainly within the metropolitan urban settings, it will be easier to do a contract for fee-for-service with agencies



that exist, which are already doing that type of work and which might be able to assist and help us. However, there might be different ways we will have to work when we get into the very far regions of the north where the communities are spread very far and where people live in a very different situation.

We are also going to be working very closely with the native community because obviously the services we will be assisting with or providing to the native community will be built on the needs they see. Their cultural divisions, their diversities, are different from some other communities'. We certainly will have to explore with the native community how we are going to be of assistance in making sure the culture is retained and that we provide those services to the best of our ability.

I might have missed a question. Is there something from the staff that they would like to add to that?

**Interjection:** There were three or four components.

**Hon Ms Ziemba:** It was a long question.

**Mrs Sullivan:** I was wondering what other models you had considered.

**Hon Ms Ziemba:** Oh, I am sorry; I missed that. I did not put my glasses on, that is why. First of all, within the whole realm of having an advocacy commission, we are leading by far. There is one other jurisdiction which has a very good advocacy commission and that is in Denmark. They are now watching us very closely and they hope to follow with some of the things we have done that will be very unique and different, so they have been following this piece.

Unfortunately, across Canada there is no other jurisdiction we can look at. There is nothing that exists. We are going to be unique and we are certainly going to be going out in the forefront.

We looked at the work that was done by Steve Fram and also by Father O'Sullivan, and we looked at the work that had been done within the Office for Disability Issues over the past many, many years and we put all that together in our form of wondering what type of commission we would have.

**Mr Winner:** The minister knows there are often difficult situations. Just setting aside for a moment the issue of family which Mr Harnick raised, there are situations where the instructions that a person, a patient, gives to the advocate may not accord with that advocate's view of what is in the best interests of the patient objectively. I am not talking now about life-threatening situations but perhaps rather the issue of medication that a psychiatric patient may need to remain lucid and responsive to treatment. How do you foresee the advocate's role in that kind of situation?

**Hon Ms Ziemba:** First of all, as I said in my statement, an advocate can often give information in a way that a vulnerable person can understand, so perhaps it might even assist a vulnerable person to be able to understand that the medication is in his or her best interests. Sometimes vulnerable people do not have that information given to them in a way that can be assimilated and understood.

With an advocate in place who can then find out what the information is, learn about it and then be able to disseminate the information properly, I think that should be of assistance and help to vulnerable people and assist them in making the right choices. Often choices are made not with the full information needed or with the best understanding of that information, and advocates will have the time and also will have the background and experience, I think, to be able to deal with those problems.

**Mr Winner:** Thank you. That clarifies it.

**Mr Sterling:** I come to this concept with a completely open mind. I hope to hear various groups make their presentations over the next couple of months because in a way it is an exciting concept in terms of trying to deal with a problem.

I also find it very discouraging that we have come to the point in our society where we have to have hired advocates to care for other people, and I do not like that admission.

This is one of the areas I am concerned about. I am very much interested in the last question, particularly in terms of schizophrenic patients who are only lucid when they are taking medication, and that the natural tendency for schizophrenic patients, after they are on medication, is to want to go off medication. One of the reasons is the side effects, and they are starting to feel better and that kind of thing, but once they go off the medication, then they go into a period of incompetency and basically do not understand the need for going back on the medication. It is a difficult problem. When we get down to the details of the legislation I will be interested to hear groups talk about how you handle that kind of situation.

One of the problems I have in the legislation is that you leave up to the commission the qualifications for an advocate. I am concerned about that in that you can have good people and you can have bad people doing these jobs. You can have people who have all the best intentions but who get carried away in terms of what they might be advising or doing for a person and whatever. I guess the problem in that, in dealing with mentally ill patients, is that they are dealing with incompetent people and trying to take instruction from them. I know, having practised law, that it is difficult to take instruction from competent people, so that is one of the concerns I have. Can you give us any kind of outline as to what you would see as the qualifications for an advocate?

**Hon Ms Ziemba:** I think those are very good points. If you do not mind, I just want to make one comment on the point you made. It is a shame that we have come to a point in our society where we would have to think of an advocacy commission. I guess our dream and our vision would be that some time in society the advocacy commission, if it has done its role that it is supposed to in systemic advocacy, will not have the need, because the systemic problems will have changed. I guess we all share the hope that this will happen and that the vision will happen in the future.

However, going back to the role of advocates, you are right. I guess there will never be a system in place that is perfect. We are human beings, and there will always be



people who will be well intentioned who will perhaps do the best job they possible can and others who might not. However, the qualifications were left to the regulation of the commission itself, because we felt that because of its being based in the grass-roots, it would come with very competent individuals who would have that definition and who would be able to understand the needs. There will be a shifting need, as I do not think the advocates of today will be the same as the advocates of perhaps 10 or 12 years from now. We have to understand that.

I think the qualifications will change as well. We will see that the qualifications will change as we continue in our expansion of understanding vulnerability, as we get a better understanding of our society's role and as we have a better understanding of systemic problems that face vulnerable people. I think those qualifications will continuously change, will have to be amended and will have to deal with the day.

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However, right now I hope we have vulnerable adults who would be trained by various groups of people to have an understanding of the different vulnerabilities, a capacity for learning, for understanding and for compassion, a skill of being able to communicate and patience. I think that will be difficult. It is certainly not going to be a role for everybody, because they are going to have to put aside their own personal beliefs and systems and instead understand the cultures that are different, and other people's systems and beliefs as well.

I would share with you that it is going to take very special types of people to be advocates. Having been in and come from the other place, I know there are people out there who do this in a very volunteer-type way, who have learned those skills and who have been able to advocate very well without the legal framework they could possibly have if we have the system in place. Family and care givers are among them. We have spoken to many families and care givers who have advocated so far beyond what people perhaps even of the legal profession have, Mr Sterling, and who have been able to do that in moving insurmountable mountains. They will be of great benefit to us, as we are certainly using the talents and skills of those people to be able to train and assist.

**Mr Sterling:** How far do you view this commission going in terms of the kinds of advocates it would be involved in producing, supplying, or hiring? You are confronted with a health care situation. You have also mentioned there are going to be advocacy services addressing some aboriginal issues and some from our multi-cultural communities. How far does this go?

We know that as politicians we have a tremendous number of people lobbying us already in terms of their wishes and desires. One of the problems I have as a politician is that I see the stronger people having the stronger lobbies, ie, the unions, teachers and those kinds of people. How far do you get involved in all of this? We could have hundreds and thousands of advocates at the end. There is no limitation on what you are saying to the commission it can get involved in, is there?

**Hon Ms Ziemba:** I agree with you wholeheartedly that there are now people who are very vocal who can advocate and hire lawyers and professional lobbyists. That seems to have become quite the trend. I think we are picking up on south of the border, and the lobby type of things people can afford to get together and hire those people to do.

However, vulnerable persons are left in a situation, especially if they are in institutions or in places where they have no family and friends, where they do not have somebody who can advocate on their behalf. They do not know that they can go out and hire a lobbyist and get together with another group of vulnerable adults to hire a lawyer or a lobbyist to support their need to change the systemic problems they face.

I guess we have a long way to go until we will be able to see vulnerable adults having as much power as what you are saying. I would like to see that vulnerable persons are being treated as equally and as fairly as every other individual in our society, with the ability to be able to carry out their wishes and be treated as all of us expect to be treated—no more and no less, but treated fairly.

**Mr Sterling:** I guess I would consider myself in politics a vulnerable adult as well, so maybe I will get an advocate.

Interjection.

**Mr Sterling:** I do not want to pay you anything, Charles. I want a good advocate.

**Hon Ms Ziemba:** You have been here longer than me. You can say that; I cannot.

**Mr Sterling:** I can relate to this when you are taking care of an individual in a specific setting and finding the right answer for that individual. I have more difficulty as you spread the net wider and you get into systemic problems and start creating funding and advocacy—when you get into the political realm as such. Then you are into other issues, and you are not into solving practical problems. The examples you give in your brief relate to practical problems; they do not relate to political problems. I do not know where you chop it off. That is my problem.

**Hon Ms Ziemba:** I guess none of us does.

**The Chair:** Could we now have the staff proceed with their presentations? Could you please identify yourself for the record before you begin?

**Ms Spinks:** I am Trudy Spinks, legal counsel. I intend to simply run through the basic provisions of the legislation, and when we are finished you might have some questions. If people have their acts handy they might want to refer to them.

Section 1 sets out the fundamental objectives of the act and essentially establishes the principles which are to govern the interpretation of the act as a whole. The overriding purpose of the act is to contribute to the empowerment of vulnerable persons through the provision of advocacy services.

As described in clause 1(b), advocacy services are intended to assist vulnerable persons in exercising control over their own lives and bringing about necessary changes in social and institutional systems. The act must be implemented in a way which promotes community development

and recognizes aboriginal and multicultural interests. As the minister has stressed, the act is not intended to interfere with individual, community or family support systems.

Clause 1(f) expressly states the objective of enhancing and encouraging these relationships.

The eligibility for advocacy services is set out in section 3. Any vulnerable person 16 years of age or older will be eligible. In addition, refer to clause 7(1)(d). The commission will be providing advocacy services regardless of age to persons who are at risk of losing their decision-making power under the Consent to Treatment Act or the Substitute Decisions Act.

A vulnerable person is defined quite broadly in section 2 as "a person who, because of a mental or physical disability, illness or infirmity, whether temporary or permanent, has difficulty in expressing or acting on his or her wishes or in ascertaining or exercising his or her rights." This definition means that the existence of a disability does not in itself make a person vulnerable; it must also be coupled with a difficulty in exercising rights, obtaining information or communicating with others. This difficulty may be a direct consequence of the disability but may also result from the failure of other people to understand communications or provide adequate information.

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Subsection 3(2) states the type of advocate to which the act applies. Only advocates who are employed by the commission or in a community program operated under the act will be able to exercise the powers granted to advocates by the statute. Advocates may be employed on either a paid or voluntary basis.

There is nothing in this act which restricts the operation of existing advocacy groups or which discourages the formation of new advocacy groups which may choose not to be affiliated with the advocacy commission. It simply means that the provisions of this act, including the rights of entry and access to records, may only be exercised by advocates who are accountable to the commission.

Sections 5 through 15 describe the composition and functions of the advocacy commission and the method through which commissioners will be appointed. There will be a full-time chair and between six and 12 part-time members. The majority of the members of the commission will be persons who have or have had a physical or mental disability, illness or infirmity. The act requires that the importance of equitable representation of both sexes, minority groups and residents of all regions of the province must also be considered.

The commissioners will be appointed by the Lieutenant Governor in Council on the recommendation of the Minister of Citizenship. The minister must, however, make his or her recommendations on the basis of nominations put forward by an appointments advisory committee. It is this nomination process which effectively puts control of the commission into the hands of the persons it is mandated to assist.

The appointments advisory committee will be composed of 10 members. Like the commission, a majority of the members must be persons who have or have had a mental or physical disability, illness or infirmity. Two members will be appointed by the minister. The remaining

eight must first have been nominated by organizations representing vulnerable persons.

Section 15 sets out eight categories of organizations which may participate in the nomination process. These categories consist of organizations representing persons with visible physical disabilities, illnesses or infirmities. Examples such as paralysis or amputation are listed. These examples are not exhaustive, however.

Persons with invisible physical disabilities, illnesses or infirmities are another category. Again examples are listed, including AIDS and epilepsy. Persons with psychiatric or emotional disabilities, illnesses or infirmities and persons with developmental disabilities are included. Persons with neurological disabilities, Alzheimer's syndrome being one of the examples, also fall into another category. The remaining two categories consist of organizations representing persons with multiple disabilities and patients' rights organizations.

Only organizations with at least 20 members, a majority of which are or have been persons the organization represents, may participate in this process. An exception to the membership criteria will be made in the case of organizations representing persons with neurological disabilities, as such individuals are seldom able to form organizations to represent their interests.

These organizations will collectively put forward two names for each position on the appointments advisory committee. The minister will select one person from each pair nominated and appoint these persons to fill eight of the 10 positions on the committee. The minister will fill the remaining two positions independent of the nomination process. This will provide the minister some latitude in attempting to ensure equitable representation according to sex, residency and so forth.

The committee's function will be to select and recommend two candidates for each position on the commission. The minister will choose one from each pair nominated, and these individuals will be appointed to the commission.

Once the commission has been put in place through this process, it will perform the functions described in section 7. The primary function of the commission will be the provision of advocacy services in the form prescribed in subsections 7(b), 7(c) and 7(d). Clause 7(1)(b) of the act describes what may colloquially be described as "individual advocacy" and provides that the commission will "provide advocacy services to help vulnerable persons to express and act on their wishes, ascertain and exercise their rights, speak on their own behalf, engage in mutual aid and form organizations to advance their interests."

In order to understand the nature of the advocate-client relationship under this act, it is vital to recognize that in no way does this section or any other part of the act give an advocate any decision-making power or authority over the vulnerable person. The advocate acts as an agent or a spokesperson for the vulnerable person in accordance with the instructions which have been provided by him or her. The relationship is quite similar to that of a lawyer and client, although conducted for non-legal purposes.

The commission's authority to engage in systemic advocacy is outlined in clause 7(1)(c), which calls for the



provision of "advocacy services to help vulnerable persons to bring about structural changes at the political, legal, social, economic and institutional levels."

Clause 7(1)(d) requires the commission to "provide advocacy services as required by any other act." The Substitute Decisions Act, Consent to Treatment Act and the Mental Health Act, as amended, all require that an advocate meet with a person who is alleged to be incapable and at risk of losing the right to make his or her own decisions. In this situation, the advocate's role will be to provide information regarding the effect of the finding of incapacity and the available legal remedies.

The other functions of the commission include conducting public education programs for guardian rights to vulnerable persons.

In keeping with the emphasis on community development, subsection 7(2) provides that the commission may carry out most of its functions through non-profit community programs and authorizes it to make grants for this purpose.

The commission is required, however, to set the qualifications and standards for all advocates and to ensure ongoing compliance with these standards.

Sections 16 through 23 give advocates rights of entry to various types of premises. The purpose of this is to ensure that vulnerable persons are not denied the benefit of advocacy services because access to their accommodation is controlled by others. This may be the case, for example, in psychiatric facilities, nursing homes, boarding homes and some private residences.

The act sets out two different levels of entry powers, one for provincially regulated premises and private commercial premises and another for all other premises, which would include private homes.

Provincially regulated premises are defined in section 17 as "facilities," and the act appends a schedule listing the statutes that create and govern facilities.

Advocates have the right to enter a facility without a warrant at any time that is reasonable in the circumstances. Once entry has been accomplished, the advocate is entitled to meet privately with vulnerable persons without interference. It is an offence to prohibit access. If access is refused, the advocate may apply to a justice of the peace for a warrant to compel the operator of the facility to allow access.

The same broad right of entry applies to premises which are operated for remuneration by a person who controls access. That is referenced in section 18. The purpose of this section is to ensure that vulnerable persons who reside in unregulated private boarding homes and rest homes have the same access to advocacy services as those who reside in public institutions.

Stricter rules apply in the case of all other premises, including private homes. Section 21 entitles advocates to enter only between 8 am and 8 pm for the purpose of visiting a vulnerable person who wants an advocate or who they believe may benefit from advocacy services. An advocate must be able to establish reasonable grounds for this belief.

As it is not an offence to refuse admittance to private premises, an advocate is effectively required to obtain a warrant if an occupier of private premises refuses entry.

Once the advocate has made contact with the vulnerable person, if he or she indicates that advocacy services are not wanted, the advocate must leave.

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An advocate will have a right of access to records relating to a vulnerable person which are kept by a facility. Access may only be accomplished if the vulnerable person consents, with one exception. If access is necessary to address a systemic problem, consent may be obtained from the commission. Because the Mental Health Act contains provisions governing access by patients to clinical records in psychiatric facilities, subsection 24(3) of the bill prohibits advocates from disclosing the contents of a clinical record to the vulnerable person unless the client's physician consents. Otherwise, the person must obtain the record in accordance with the Mental Health Act.

Section 27 sets out the rules advocates must follow when exercising access.

Section 28 enables an advocate to apply for a warrant to compel access to a record if access is denied in contravention of the act.

As the minister indicated, the act effectively requires that all information acquired by advocates be kept strictly confidential. The act permits advocates to disclose information without a client's consent only in limited circumstances. Such circumstances include a situation where a vulnerable person is likely to cause serious bodily harm to another person, or as may be required in the course of certain legal proceedings.

An advocate is required to disclose information as directed by the client or at the commission's request to an employee of the commission. In addition, an exception applies allowing for disclosure to other advocates, to the commission and to vulnerable persons for the purpose of systemic advocacy. Advocates who breach the confidentiality rules of the act may be subject to prosecution.

You will note that subsection 31 provides that the confidentiality provisions of the act do not apply to information contained in a record in the possession of an advocate who works for the commission. This is because the commission will likely be governed by the Freedom of Information and Protection of Privacy Act if it is designated as an "institution" for that purpose. That act contains its own set of confidentiality provisions, but those provisions only apply to information which is recorded.

Accordingly, advocates who are employed by the commission will be governed by two sets of rules. Information which is recorded will be governed by the Freedom of Information and Protection of Privacy Act. Information which is not recorded—ie, not documented in some way—will be governed by the confidentiality provisions of the Advocacy Act. This distinction will not apply to information acquired by community programs or advocates who are employed by these programs and not directly by the commission. This is because they will not be "institutions" under the Freedom of Information and Protection of Privacy Act. As a result, they will be governed solely by the confidentiality provisions of the Advocacy Act.

Section 36 enables the commission, with the approval of the Lieutenant Governor in Council, to make regulations

regarding certain aspects of its day-to-day operations, including the establishment of regional offices and the qualifications and educational standards which will be applied to advocates. You will note that clause 36(d) enables the commission to make regulations governing the provision of services to persons who cannot provide instructions to an advocate due to mental incapacity. This authority is included because such persons are often extremely vulnerable to abuse and neglect. Accordingly, certain advocacy services may be deemed by the commission to be appropriate for these persons. The nature of these services and the necessary guidelines can be identified and developed by the commission once it is in place and in a position to give this very sensitive area thorough consideration.

**The Chair:** Thank you very much, Ms Spinks. Any questions or comments?

**Mrs Sullivan:** I do have some questions relating to the drafting of the bill that provide some concern. They relate to the fact that the bill provides that regulations will do almost more than what the act itself does. Regulations will define the exact nature of the advocacy services that are to be provided. In fact, there is more time spent in the bill on the compensation of advocates than on the actual services that will be provided by the advocates, and I am very concerned about that.

I am also concerned that guidelines for the determination of mental capacity under section 36 will be defined in regulations, not in legislation. Guidelines for the training and screening of advocates are not included in legislation; that is to be by regulation. Definition of the facility: not in the legislation, but by regulation.

It seems to me that for a vulnerable person, or for people who are associated with that person, the more information that is open and available and clear, and clearly spelled out, the more successful any kind of an approach to advocacy will be.

Indeed, for those of us who are reading the bills as they are drafted now, this bill along with the other two, we find inconsistencies, overlaps and a very confusing array of approaches. If significant portions of the bills are hidden in regulation, surely to goodness, even for people who are not vulnerable or who are only vulnerable for a certain period of time—and I am thinking of schizophrenics, by example, or people with Alzheimer's who may have specific vulnerabilities at one period of time and fewer at another period of time—surely this kind of confusion should be cleaned up and information that is highly specific and necessary should be included in the legislation so it can be debated in a public forum and there can be consultation on those issues in a public forum. We know how regulations come about. They tend to be behind closed doors, with little consultation, and frequently do not meet the requirements. I am very concerned about that.

I am also concerned about the sections of the bill relating to the requirement for the advocate to have access to records, including, under section 24, clinical records. If clause 7(1)(b) is indeed what the advocate is intended to do, although we do not know that because we have not

seen the regulations, why does the advocate require access to the clinical records of vulnerable people?

**Ms Spinks:** I will address first the issue of the regulation-making authority.

The commission as is described, particularly through the appointments process and so forth, is very much a consumer-driven body. It is meant to be chosen by, created and driven by the very people it will be serving. It would, I think, effectively defeat the purpose of the legislation to spell out in detail every aspect of the commission's operation.

The commission is doing a fairly novel job. It is not something we have a tremendous number of models for. It will be an evolving process. The commission will have to consult and to determine, as it gets up and running, what the particular needs are for different groups and how it can best serve the vulnerable communities. It is not an oversight that much of the day-to-day detail of the mechanics of running the commission was left for future regulations. It is quite consistent with the idea that the commission should be independent and autonomous.

With respect to access to clinical records, consultations we have had with advocates who are currently operating, both under the psychiatric patient advocate office and otherwise, have indicated to us that in order for an advocate to properly serve a client, it is essential for him or her to be able to get an accurate picture of how in fact that person is being treated. The day-to-day regime of the person's life in an institution is highly regulated, from what he wears to the time he eats, when he goes to bed and what kind of treatments he has and so forth. In order to do the job properly, a person must have information. You cannot advocate effectively without it.

With respect to clinical records, the practice to date with the psychiatric patient advocate office has been that it has had access to clinical records. In fact, I think maybe it has broader access than this act contemplates, and the whole system has worked very effectively.

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**The Chair:** Anything further, Mrs Sullivan?

**Mrs Sullivan:** I think Mr Poirier has a question.

**Mr Poirier:** I have a number of questions, actually. Could you elaborate on that right to access? I am a bit worried about that because of the privacy of the records and whatever, the material for the vulnerable person. I can see interesting scenarios of maybe conflict and whatever in that aspect. Could you elaborate a bit on that?

**Ms Spinks:** Access to records?

**Mr Poirier:** Yes.

**Ms Spinks:** Essentially, the act permits an advocate to have access to records, provided that they are records maintained by a facility. You turn to the schedule in the act to determine whether or not that particular place is a facility. If it is governed under one of those statutes, it is. The access is only to records which relate to the client, not to other people. This act does not provide any right of access to personal information involving others unless it is under very highly supervised circumstances.



**Mr Poirier:** I guess they come in and ask specifically to see and have withdrawn from the records the information specific only to that vulnerable person.

**Ms Spinks:** That is right. Our advice is that generally speaking these records are fairly readily identifiable. They are maintained in respect of each particular patient or resident. They will have that access obviously only with the consent and on the instructions of the client. Once they have the information, the confidentiality rules kick in. Those rules constrain an advocate from disclosing what is in there to any other person unless the vulnerable person himself or herself considers the matter and gives instructions to do so.

**Mr Poirier:** Another point: the formation, skills requirements, training, whatever, of advocates, whether with the commission or with an organization. How about standardization, minimum criteria, qualifications, diplomas?

**Ms Spinks:** If you look at section 36, it specifies that the commission may make regulations establishing minimum qualifications and educational standards for advocates, so that is the section which will enable the commission to ensure that they are properly supervised.

**Mr Poirier:** Nothing has been done so far on that, right? You will inherit what you inherit or whom you inherit.

**Ms Spinks:** No. Once the commission is in place, the commission will decide who the advocates will be. Some of those people may be doing sort of informal advocacy, without the umbrella of this legislation. At the present time they may want to become advocates and will apply to the commission to be so authorized. Obviously that represents a terrific pool of expertise to draw from, but the commission will not be compelled to inherit anything. It can also choose perhaps to give grants—

**Mr Poirier:** It could end up meaning that some people who are advocates either part-time, full-time or whatever right now could not meet the commission's minimum requirements to be an advocate. Could that not be true?

**Ms Spinks:** That is correct. If they are operating now and the commission establishes criteria, they would have to meet those criteria. From the consultations we have had, and I do not want to second-guess what the commission would do, I anticipate the commission would probably be looking at a very wide range of backgrounds and so forth so that the criteria it develops would not be so narrow that they would effectively professionalize that role.

**Mr Poirier:** Not that I am looking for some worst-case scenarios, but another point: I am glad the commission wants to recognize the support of family, friends and whatever. What of the scenario where family or friends have been somewhat of an advocate for a vulnerable person? How does one of your formal advocates with the commission resolve that difference of opinion as to what the needs, the requirements or desires of a vulnerable person are? The debate between one of the commission's advocates or an organization's advocate and an informal advocate from the family, an immediate family member or a friend or relative, how would you resolve that?

**Ms Spinks:** In order to understand that, the key is to recognize that an advocate does not have decision-making

authority. An advocate is not a guardian. In order to have a guardian, one will have to go through the Substitute Decisions Act and all the requirements of due process would kick in.

An advocate, on the other hand, does not have any decision-making authority, and so in that rule they would be attempting to ascertain the wishes and preferences of the vulnerable person but would be doing so on his behalf only if that is what he wanted.

**Mr Poirier:** If there is an indication from the vulnerable person that he wished to have an advocate—I am talking about either somebody who may have schizophrenia or somebody who has Alzheimer's, where he is not too clear as to what he wants or what he states or how he states it and it changes from day to day. My father has Alzheimer's and I am getting to be quite—

**Ms Spinks:** It is a good point. I think you are talking about the capacity to instruct. It may fluctuate and so forth, and it is a complex area. To date, advocates who work in the field have indicated to us that, with experience and with skill, they can interpret what a vulnerable person is telling them. This is not to say that a person may be, for example, capable on all levels of instructing an advocate. An individual who knows and can express his preferences with respect to day-to-day things may not be capable of instructing an advocate as to how he wants certain aspects of his finances managed by a guardian, for instance.

**Mr Poirier:** Would you operate on that aspect of guardian versus advocate? In layperson's terms, what would the difference be, according to you? Why the legal framework for an advocate, as opposed to a guardian? In 25 words or less, in non-legalese, how would you make that distinction?

**Ms Spinks:** The reason for the distinction of why there will be a definition in the guardianship legislation and not in ours is that guardians acquire massive legal authority over a person. They have significant power. They replace the individual. In order to get there, they must be carefully scrutinized and the standards must be open to review. That is not the case with advocacy. An advocate is not there to do anything to the person.

**Mr Poirier:** Not do anything to a person but do a lot for a person. Does that advocate not have some legal powers to do something on behalf of the person, like access the records, access the property? I do not know; I am trying to understand better the distinctions.

**Ms Spinks:** They do, but I think what you are talking about is where a dispute were to arise, for example, where a service provider says, "I do not believe this client, this resident here, has the capacity to give you consent," and the advocate disputes that. Ultimately, the way the act is drafted, the only way for that to be resolved is before a justice of the peace. If they have different viewpoints, then the resident or the service provider refuses access on those grounds and the matter is taken up and whatever evidence must be called forth in that regard will be called forth at that time.

**Mr Poirier:** For example, in the case of my father I have a legal document that says I have the power to decide

for that person. Could that provide a showdown between an advocate and the person who is the legal person behind somebody who may have Alzheimer's, for example? How would you resolve that difference?

**Ms Spinks:** Technically I think you are correct in the sense that an advocate may, on occasion, be in conflict with a guardian, but the advocate will be acting on the instructions of the client. Now, the vulnerable person may still have or want some input into what the attorney or the guardian is doing, and that may be very legitimate, or in fact may ultimately want that guardianship removed or changed. An advocate has an important role to play in that regard.

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**Mr Poirier:** Some of the wording in the act mentions specifically that the advocate may go in there thinking there may be someone who may need the services of an advocate, whereas that vulnerable person, the way I read the language here, may not realize whether or not he might benefit from an advocate. Right?

**Ms Spinks:** That is true, but I suggest that decision could not be made until the connection between the two individuals has taken place and the powers of entry are framed to enable that to occur.

**Mr Poirier:** Would not that power of entry also be applied in the case where the vulnerable person may not have had a contact yet with the advocate? What if the advocate thought there was somebody inside there who could benefit from the services of an advocate? Obviously, the vulnerable person may not normally be aware.

**Ms Spinks:** Then, under the act, the advocate could exercise entry under section 21.

**Mr Poirier:** And if the advocate finds that the vulnerable person has a person with legal power of attorney or a representative or the family or whatever, would you expect that advocate to respect that, or push it further, or what? I am trying to establish a dispute-resolving mechanism in case there is a conflict of jurisdiction over the vulnerable person's rights.

**Ms Spinks:** I understand, but I guess that is the key, that the guardian or attorney has jurisdiction over the vulnerable person's rights. The advocate does not have any legal jurisdiction over the individual, so in that instance he would try to determine what the problem is, what the vulnerable person wants done, which may be that the advocate should leave, and in that case he would have to do that.

For example, if the vulnerable person had questions about the administration of the property under the power of attorney or the guardianship, the advocate can play a very facilitating role in connecting with the guardian and determining what has actually taken place, perhaps communicating that to the vulnerable person, clarifying the issue. It is not necessarily an adversarial role.

**Mr Poirier:** I hope not.

**Ms Spinks:** In fact, it could be quite useful in situations like that.

**Mr Poirier:** Right. I am sure it will be very useful in the vast majority of cases. Hopefully we will not see any adversarial situations, but I always like to get ready for the

worst-case scenario, because as an individual, if you try to tell the advocate to go take a long walk on a short pier, there are some legal provisions in the act that say no, you cannot.

What would a legal guardian or an attorney, a person with power of attorney for a vulnerable person—what would happen if you had this type of legal showdown, for example, in the case where a family member, who may not necessarily have a power of attorney or be the official guardian of somebody, has a conflict with the attorney? How would you resolve that?

**Ms Spinks:** Again, this is client-directed and client-instructed, so the only conflict would be between the wishes of the individual vulnerable person, as perhaps expressed by or through the advocate, and the guardian.

**Mr Poirier:** But what if that vulnerable person was an advanced case of Alzheimer's that could not verbalize or indicate—

**Ms Spinks:** Well, that brings us back to the whole question of the capacity to instruct. As I say, the act does not provide for any review board mechanism as does, for example, the Consent to Treatment Act on those issues. The reason for that is that the downside of having that is it creates a tremendous layer of bureaucracy and it also perhaps interferes in a relationship which cannot be very well defined. It is not the same as legal incapacity.

Advocates are accorded a certain amount of leeway in determining whether or not they can take instructions because they have such a lower level—as a matter of fact, a non-existent level—of decision-making authority. That is the difference.

**Mr Poirier:** They can make the decision if they are directed by the vulnerable person, but the more vulnerable the person, probably the less capable of vocalizing or saying clearly what he wants or needs or expects out of the advocate or the legal guardian, right?

**Ms Spinks:** That is quite true.

**Mr Poirier:** Obviously that domain is still a bit nebulous as to how we resolve this issue.

**Ms Spinks:** It is somewhat nebulous. I think all we can judge by right now is the experience of advocates in practice and in the field and they do not report that this is particularly a problem. It is not a problem with family members. It has not been a problem with advocates knowing when they can take instructions and when they cannot.

**Mr Poirier:** Okay, thank you very much. I hope that is true. If it is not true, then I am sure you will be very willing to look at what you will come forward with to amend it or tighten it.

**Mr Winninger:** I have two questions relating to sections 24 and 25, access to records. My only experience, by the way, is under the Mental Health Act, but I see that is incorporated into section 24.

First of all, you will undoubtedly have situations where the doctor would prefer that the medical information not be passed along to the patient but rather remain with the advocate. I would ask whether that does not place the advocate in a very difficult position, because I cannot imagine why an advocate would want access to that patient's



information unless that advocate can discuss the information with the patient so that the patient can be informed when instructing the advocate. Maybe you can deal with that first.

**Ms Spinks:** The Mental Health Act provides that where a physician is of the opinion that the contents of the clinical record should not be disclosed, the decision as to whether or not it meets the criteria for that finding has to be made by the review board. In other words, the individual has the opportunity to challenge any decision by a physician that it would be harmful for him to have access to his own clinical record. The Advocacy Act has set up very much a parallel system. What it provides is that where the physician is of that opinion, as he might be if a request were made by a patient under the Mental Health Act, the individual's recourse is to go through the Mental Health Act to gain access to the records, and the advocate could assist him in doing that. But I think you are quite correct: It does place the advocate in a somewhat delicate situation.

**Mr Winninger:** I can understand why certain competing interests, like public safety or the patient's safety, are counterbalanced against a patient's right to access under the Mental Health Act, but here I think we are dealing with a different thing, because we are dealing with advocacy on behalf of the patient. That may tend to be the paramount concern. But I will be brief. I just wanted to ask my supplementary question.

Section 25, which allows an advocate access to a patient's information where the patient has not received individual services from the advocate and the patient may not be consenting to the advocate having that information disclosed: I just wonder what rationale there can be for proceeding to gain disclosure of the patient's record without even, perhaps, that patient's knowledge that it is being done and certainly without that patient's consent.

**Ms Spinks:** Under the act the only rationale for accessing records in that situation is for the purpose of systemic advocacy, the reason being that where a systemic problem is suspected, it may involve looking through the records of 20, 30, maybe hundreds of patients or residents, either present or past, to determine what the practices of that institution have been. In that instance, the consent of each and every individual is not required. The reason the act is qualified by stating that consent is not required if the advocate has not provided individual services is because if the advocate has dealt with someone and has acted on an individual's behalf, then it is likely that he knows whether or not he has made the choice to release the records, whereas if he has not provided individual services the advocate would have to perhaps contact numerous people who may no longer be residents, whose addresses may not even be available, and so forth.

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**Mr Winninger:** I will just conclude by saying that I do see a problem there, where you are sacrificing a patient's personal confidentiality for systemic advocacy. There may be a conflict there.

**Mr DeMarco:** May I add something to that? It is clear that the act is based on client-instructed advocacy. That is the prime principle and the cornerstone of the act. The

activities the advocate undertakes are based on instructions from the vulnerable individual. At the same time, it is the historical experience of vulnerable adults, especially those who are institutionalized, to be subjected to systemic abuses. We have many examples. Our experience in looking at the history of advocacy with regard to the psychiatric patient advocacy office indicates that there is a need for systemic advocacy.

There have been instances within institutions where people have been systematically exploited and abused. Part of that abuse is coercion, making it difficult for individuals to come forward with their complaints of abuse. So while your point is well taken, there is a real need not to throw the baby out with the bath water with regard to balancing the client-instructed aspects of advocacy with the reality of social isolation and coercion that many people who are vulnerable do experience.

**Mrs Sullivan:** I want to move to the section regarding the makeup of the commission. One of the things that is being discussed in several meetings I have had with organizations representing people who require care, who are vulnerable, relates to the decision to insist that the majority of the commission be representative of vulnerable people rather than including a larger space for people who provide representation for those people already.

We have a number of agencies, community organizations, who are indeed working on behalf of and advocating for vulnerable people in many areas, yet many of the people who may not suffer themselves from a particular illness or disability but who may be a stronger advocate, perhaps, or have more experience in terms of advocacy itself, are not going to be allowed to participate on that commission. I wonder why that decision has been made.

**Mr DeMarco:** First of all, in terms of description, you are absolutely right: The majority of commissioners shall be people who are or have been disabled. The important point to make there, without neglecting or in any way diminishing the role that traditional social service providers or families have played in the past, is one that people from the community make. That point is that a fundamental right in our society is to make decisions for yourself on your own behalf with regard to your future and your life.

Many people with disabilities historically have come into conflict with traditional care providers, traditional professionals or family members with regard to the assertion of their independence and their right to make decisions affecting their lives. The commission is based on the premise that historically, people with disabilities have been deprived of their rights to make decisions, whether good or bad—which is a right in our society; to chart your own course—just on the presumption that they were either incapable or incompetent, say, to undertake the tests associated with everyday life just because they have a disability. The assertion here is that this has more to do with traditional attitudes and stereotypes about disability than it does with the real abilities of the people we are classifying as vulnerable. That is why in the act and in the commission there is an emphasis on community control, but not to the exclusion of other stakeholders or other participants.



**Mrs Sullivan:** I have a supplementary on that if I can just find the section of the act I am looking for. For several years I worked with the Multiple Sclerosis Society, and I think you have a section that would cover patients who—

**Mr Sauv :** I think you are looking for section 15.

**Mrs Sullivan:** I think maybe subsection 15(2). Just to use the example of that particular association, many of the people who are doing frequent work, including patient care, including advocacy work and so on, do not themselves suffer from the illness but may have had a relative, a friend, and have come by various and different means into participation in that association.

That particular illness is one in which a patient can be going through remission and then into an active stage of the illness. Indeed, the stress of participation for that particular illness for some people may be such that it would be better, if multiple sclerosis wanted to have a voice on the commission, to be represented by someone from the agency who is a known and considered advocate for people with that illness and who understands some of the natures of that illness that translate into other areas of disability. There are many crossovers in terms of needs of people.

I suggest to you that AIDS is another area, and one of the reasons that AIDS is another area is that people die very quickly. So the consistency of representation is also problematic. Schizophrenia is also highly problematic in terms of having people who are actually suffering from the disability participate and use their own voice. I suppose what I am saying is, other voices may be able to speak for those people in a continuing aggressive way on the commission when the disability itself creates problems for people who suffer from specific disabilities. I see that as an issue that should be dealt with. It is one that has been raised by many groups, including people who are themselves disabled.

**Mr DeMarco:** With regard to the actual formation of the commission itself, there is nothing to preclude the scenario that you have just sketched coming to fulfilment. That is to say, there is nothing in the legislation that precludes the appointments advisory group from nominating someone without a disability. The only provision is that a majority of the commissioners shall be people who have or had a disability. So there clearly is a role.

In addition, to reiterate what the minister said, there is provision through the advisory council process for a role to be played by traditional care givers or professionals. The policy issue is the balance between them, and clearly the legislation embodies the community perspective, which says that part of the disempowerment, part of the vulnerability experienced by people with disabilities, has been their exclusion from the social policy process with regard to the services that are provided to that community.

Over the last 20 years or so, major evaluations of social policy in terms of the effectiveness and efficiency of social policies have put forward the view that efficiency and effectiveness could be improved by increasing the number of consumers involved in the formulation and the delivery or implementation of social services. That is the major policy rationale underlying the content of this component of the legislation.

**Hon Ms Ziemba:** I just wanted to add to that too. I am sure you are aware, and you have been there before, that in the past commissioners to all commissions have always been appointed by the government of the day. We hope this process will take it back to community groups, irrespective of politics, and take into consideration vulnerable persons, not the politics of the day. So I think this is bringing things back into a real grass-roots level of democracy that we have not seen as yet. I am looking forward to that process rather than the political process.

1720

**Mrs Sullivan:** I have another question and I suppose this one will have to be to the minister. Minister, I think everyone would like to know why we are not proceeding with omnibus legislation, bringing together the three acts—or, I suppose, four or five acts—instead of proceeding in this way where we have different acts determining where an advocate can move in or should move in, where there is a difference in terms of definition of competence and capability, where there are confusions. Why is there not an omnibus bill that is understandable, straightforward, that people can get a handle on? Why are we dealing with it in this absolutely confusing and inconsistent way?

**Hon Ms Ziemba:** First of all, just to bring you back to the very beginning, we have listened very closely to community groups. We have been with them for many years in saying that a commission was needed that would represent vulnerable adults and be at arm's length from the political party of the day, which would be able to carry on in a way that would not have the politics of the day keeping them from being true advocates. I think that is one thing that you have to really look at and to understand.

So the commission standing on its own can certainly play a role, totally aside from other ministries, other places, other beings. I think it is a good process that will give vulnerable adults their role to play and will certainly make the commission have strictly a relationship that will not be in conflict and will not be subject to scrutiny that it is not listening to the vulnerable people.

**Mrs Sullivan:** But when you are looking at the particular three acts, the Consent to Treatment, the Substitute Decisions and this act, what you are seeing are three separate pieces of legislation which must be read together in order for a particular case to be followed. Indeed, if you work out on a chart where you start, where the substitute decision-maker comes in, when the advocate comes in, when the doctor comes in, when somebody else comes in, and if, for example, a person has to be committed to an institution, it is an extraordinarily complicated, overlapping body of legislation.

Why is it not all together in one bill that shows a simple, straightforward flow of where choices can be made by the vulnerable person, by others, what action should be taken for particular circumstances at particular times? This is an absolutely bizarre and confusing way to proceed. Why is it not in one bill?

**Hon Ms Ziemba:** I am sorry you feel that way. I think what we have, unfortunately, in the situation right now is that we do not have a system in place. What has happened



over our society is a system that has developed where vulnerable people have fallen between the cracks. They have been abused, neglected, and we have listened to coroners' requests, we have listened to the Fram report, we have listened to the O'Sullivan report, and we have listened to advocacy groups who have said very strongly that there has to be a place where we make sure that vulnerable adults have a place in our society and are no longer neglected and abused.

This is a very complicated issue. Vulnerability is complicated. It is not a simple statement of fact. So we cannot look at this as if we can come forward with something that would be, as you would say, so uncomplicated. It is a complicated thing.

I think the process we would like to set up is a place and a commission that would make sure it is a non-political place, that there is a commission that is being administered—I guess it is the old adage—by, for and with the help of honourable adults. It certainly will not have the political ramifications that could happen if you set up a system where instead the political party of the day is putting their friends in place. I think we have to be looking at these issues in that type of framework.

Having said that, I am sure that as we go forward with deliberations and communities come forward with their suggestions and concerns, there is always room, as we said at the very beginning, to take those considerations into place and to make this act a good act that will certainly take into concern the vulnerable adults.

**Mrs Sullivan:** My question related in no way to political partisanship in relationship to the setup of a committee. I am thinking of the person who needs assistance, one way or the other way, whether it is in providing consent, whether it is in questioning consent, a determination that is being made about capability, whether it is determining whether one needs a substitute decision-maker on a full-time basis or on a part-time basis. The Substitute Decisions Act provides several alternatives, when and where guardianship could kick in.

Why not one omnibus piece of legislation to deal with the issues that are arising for the vulnerable person? Why three separate pieces when you have to read one to get to the other, when in one bill we do not know what an advocate does, when in another bill, the advocate does some things and in a third bill, the advocate does something else? Why not one piece of legislation?

**Hon Ms Ziemba:** The advocacy commission is set up mainly, as I have said, to make sure that when the other pieces of legislation are in place that advocates will be there to explain the process to the vulnerable person so that if a vulnerable person does not understand guardianship or does not understand the Ministry of Health Consent to Treatment Act there certainly will be an advocate that could explain that process to the vulnerable person, and the needs of the vulnerable people could then be taken into consideration.

**Mrs Sullivan:** You said the advocate is there to provide advice about the rights and choices to be made in terms of decision-makers, consent and so on. On the other

hand, the legislation says that the advocate can have access to the clinical records to assist the vulnerable person to make that decision. I think those kinds of inconsistencies should be cleared up and could be cleared up through one omnibus approach.

When you look at it, in fact what does the advocate do? What power does the advocate have? How is the vulnerable person empowered by the advocate in terms of decision-making? I just think that is so scattered and conflicting that it is going to cause a lot more problems than it will solve. There is nobody in this room who does not believe that we have to have additional protection for people who are vulnerable. The thing is, why do we not get it right the first time?

**The Chair:** Just a reminder that the honourable minister will be back after the other presenters to tie in the four bills. Maybe at that time, this line of questioning might be more appropriate.

**Mr Poirier:** I have two questions. First, if I may take a few seconds, Minister, I commend you on the methodology you have used to assemble the commission, but I would like to remind you there was somebody else before you in government. From my experience in five years, the process of how the people have been chosen to sit on agencies, boards and commissions, you have not invented sliced bread with how you are doing it.

In the past when I personally got involved to choose people in the community to sit on ABCs, the non-partisan approach you are using—I have seen it before and I am glad you are continuing it—did not start with the arrival of your government. Then I will close the bracket on that one.

The first question is, would you elaborate on the consultation process you have chosen to put in place for the advice you went and got in the community across Ontario? Could any of you elaborate on who you consulted, where and how, to come forward with this?

1730

**Hon Ms Ziemba:** Just to go back, you may be right and I am sure over the 100 years that ABCs were there, previous governments have consulted. However, this is a formal process and all the other processes were informal. This makes sure that the formal process is there for communities to have the input. That is the little difference I meant. It is a little innuendo, I am sure, but I would not want to say that other governments have not; even the Progressive Conservatives I am sure have often gone to community groups and asked for their advice. However, this is a formal procedure and will always have to be there, unless another government changes that formal procedure.

Do you want me to name off the list of names? Or do you want to just have a copy? The consultation record and the process that we have gone through, the Advocacy Centre for the Elderly—I am proudly wearing their button; Advocacy Resource Centre for the Handicapped; the Council of Ontario Seniors; Easter Seal Parent Advocacy; Justice for Children; Martland Consulting Group, Mayor's Committee on Aging; office of child and family advocacy; Ontario Advocacy Coalition; Ontario Association of Developmental Service Workers; Ontario Friends of Schizophrenics/Michael Cassidy; Ontario Long-Term Residential Care Association;

Ontario Medical Association; Ontario Nursing Home Association; Parents Empowering Parents; People First; psychiatric patients advocacy office; PUSH Ontario; the official guardian; the public trustee and York Support Services Network.

On a more informal basis, in every town I have visited, we have met with various groups. I have talked to people informally. We have had larger meetings where people were invited to come and give their opinions and discuss the act informally with us.

You can have a copy of this. It is in the briefing material.

**Mr Poirier:** Did the material also list the children's aid societies? Did I hear that?

**Hon Ms Ziemba:** There is something with children, but it is not the children's aid societies—the office of child and family advocacy and there were others, Parents Empowering Parents and Justice for Children.

**Mr Poirier:** Did you have hospitals and hospital associations?

**Hon Ms Ziemba:** Yes, the Ontario Medical Association and Ontario-Long Term Residential Care Association.

**Mr Poirier:** But not the hospitals per se.

The second and last question I have for the moment: I am going to section 1, the purposes of the act, and section 7, the functions of the commission. If you look at clause 1(d) and clause 7(1)(f), it says the purpose of the act is, among others, "to take into account the religion, culture and traditions of vulnerable persons," and that a function of the commission is "to ensure that advocacy services are provided in a manner that takes into account the religion, culture and traditions of vulnerable persons."

We all know that vulnerable persons, in some cases, will have a mother tongue that is not English, whatever it may be, and will revert to or be limited to that mother tongue that is non-English. What provisions do you see for the act or for the commission to be able to provide services in the vulnerable person's language of usage?

**Hon Ms Ziemba:** If the advocate does not have those language skills, obviously then an advocate can go out and find the interpreter to provide those language skills, although I would hope that some of our advocates eventually would have some of those language skills as well.

**Mr Poirier:** Do you see that the commission will have a mechanism in place that if there is a language problem that—

**Hon Ms Ziemba:** Very definitely. That goes with the native community as well, because I think as we work towards our Political Statement of Relationships that we really must take into account the cultural plus the language differences that we have within the native community as well.

**Mr Poirier:** Very good. I am glad to hear that.

**Mr Wessenger:** I would like some clarification with respect to the appointments advisory committee. What I am concerned about are categories 1 to 8. Within each category you could have a multiplicity of organizations. I would like it clarified, when there is a multiplicity of organizations

falling under these categories, how it is going to work that they will come up with two nominees.

**Hon Ms Ziemba:** None of us want to put people in categories and have those categories in place. However, if we are to have a system that is functional and that becomes so large, we had to try to define what those disabilities would be and put them into organizations that would define them. That is how we came to that position. We also decided that since we had a little bit of leeway—if, for instance, a vulnerability was not included then of course the advisory committee has some room, as well as the minister of the day, to make provisions for adding a group that should be added and put into place.

**Mr Wessenger:** If I might continue on, let's just take, for example, organizations representing persons 65 years of age or older. You could have 20 organizations within the province of Ontario representing persons age 65 years or older. Supposing each of those 20 came up with 20 different names, are their votes weighted according to the membership? It is just the mechanism I am looking—I do not think, Minister, it is your position to answer this, it is really for your staff to answer how they would deal with that type of situation. It is a technical question.

**Hon Ms Ziemba:** It is a technical question. I think we will be facilitating groups to come together and try to nominate people and have the democratic process that works out. But you are right, I think there could be many groups within any category that have that. That technicality will have to be developed and worked on by the staff to make sure there is no concern that perhaps people cannot come to the elective process.

**Mr Wessenger:** I notice there is a requirement that the majority of the members be disabled, but that would not stop one of the organizations from 1 to 8 nominating someone who did not fall within that category. Is that correct?

**Hon Ms Ziemba:** That is right. For instance, Mrs Sullivan talked about multiple sclerosis. If the people within that category decided they prefer to have a care giver or somebody who has been advocating on their behalf, that is what the democratic process is all about.

**Mr Wessenger:** That was my understanding; I just wanted to confirm it.

**Mr Poirier:** They will call it the retired MPP benevolent fund association.

**Ms Carter:** First, just a comment. Somebody came to see me in my office today. He was a psychiatric survivor, I guess. He thought all the people on the commission should be people who have been there. There really is a feeling, I think, that only those who have undergone some of these treatments or whatever can really understand what it is like.

How are advocates and vulnerable people going to find each other? In some cases there will be no difficulty, but there might be some and they might be the most severe cases tucked away in a room in some boarding house or whatever and maybe do not even get to see a doctor. Nobody knows they are there and they have problems. Can anything be done about that?



**Hon Ms Ziemba:** I think it is always a fear that some will fall between the cracks. One of the provisions of the act would be that people who are neighbours or outside the system, perhaps even a staff person of an institution, might feel that if there is the opportunity to call an advocate and they would not have to name themselves they would not get into trouble. I think that is a provision we have to be very careful with and protect, because there could obviously be people who would feel that if they came forward and had to reveal who they were, the ramifications could also hurt them as well. We are trying to make that possibility there. I think that is a very important provision.

However, the case scenario you are talking about always worries me, how we can make sure we reach out. We hope systemic advocates can do that type of work to make sure people out there at least—we might not know about them individually, but the system will change and will improve because of the systemic provisions brought forward in legislation and regulation. It will change the lives of other people we might never know existed.

1740

**Ms Spinks:** One of the reasons the authority to enter is included in the act is for precisely that sort of problem when a person cannot—

**Ms Carter:** But the person entering would have to have some idea that there was somebody there.

**Ms Spinks:** Yes, a third-party referral, perhaps a neighbour or someone—but it is to reach those individuals who maybe cannot make contact themselves.

**Ms Carter:** Even in a family situation, although I am sure most families are supportive, it is not 100%. There are people in family homes who need assistance.

**Ms Spinks:** Sometimes families are also in need of information and the situation is that they really do not understand—it might be language or other reasons—that there are systems or services in place where they could get assistance and help. The call of somebody else going into a family situation could actually support and help the family get the services they need so they are not under duress and stress and can get the assistance.

**Mr DeMarco:** Clause 7(i) of the legislation charges the commission with the necessity to conduct programs of public information and education, which is part of the issue you raised. At the same time the commission is charged with utilizing community development strategies. If any type of strategy is designed to get people out of offices and on to the street and to increase the likelihood that those who might fall through the cracks through traditional systems are located and helped to connect with organizations—and to further that, since the commission is charged with enhancing mutual aid, connecting with existing organizations—we think that overall, the likelihood of people falling through the cracks is very much lessened through the framework for the commission and the types of strategies there to employ than might be the case with other types of social service intervention.

**Mr Poirier:** To go a bit further with Madam Carter's intention, if staff or someone would call an advocate and

identify themselves, obviously that type of information, the identity of that person, would be protected. So there is no way, even if they do identify themselves—

**Hon Ms Ziemba:** Even if they did they could be protected. However, if they did not want to identify themselves they would not have to. It would be taken as a serious call rather than just somebody making a prank call.

**Mr Poirier:** There is legal protection whether they identify themselves or not.

**Hon Ms Ziemba:** Yes, absolutely.

**Ms Carter:** Sometimes it might be obvious; there might be only one person dealing with that person. Then we would need some kind of whistle-blower protection for them.

**Hon Ms Ziemba:** That is in the act itself. The confidentiality provisions apply to any information acquired in the course of an advocate's duty.

**Mr Poirier:** Fair enough. I just wanted to make sure of that. Thank you.

**Mr Winner:** I want to return briefly to a comment, I believe made by Mrs Sullivan, in regard to why we have three acts instead of one act. I think the public should be reminded that there is already great economy in these three acts because, to make up the Substitute Decisions Act we have taken the Powers of Attorney Act, the Mental Incompetency Act and the Consent to Treatment Act. We have taken the provisions from the Nursing Homes Act for consent to treatment, the Public Hospitals Act, the Mental Health Act and I know advocacy has also taken provisions from the Mental Health Act as well. So I can think of six acts, in a sense, that have been brought together in three acts. I suggest there is great economy achieved there.

**Mrs Sullivan:** So let's get one. Let's integrate more.

**Mr DeMarco:** May I make one point by way of clarification? The Advocacy Act could be characterized as a civil rights bill for people with disabilities. Clearly many of the difficulties people with disabilities have experienced in terms of social services have primarily been with the issue of competency and guardianship. Some have been presumed incompetent when in fact they were competent but could not communicate, had other difficulties in living in the community, or difficulties with physicians and the medical system—the tendency to medicalize problems that are social in origin.

I think it is important to note that while the Advocacy Act deals with vulnerable adults, those defined as having moderate to severe disabilities, the Consent to Treatment Act and the Substitute Decisions Act are broader and more generic. The Consent to Treatment Act deals with consent issues for you and me as well as provisions dealing with people who are vulnerable. Provisions of guardianship and substitute decision-making entail provisions in terms of specifying power of attorney if you become incompetent in the future. There is a generic quality to the other two acts that is broader than the relationship to vulnerable people which makes the situation more complex than it might be if we were just dealing with people who are vulnerable.

**Hon Ms Ziemba:** I want to make one more comment if I may—and I do not want to take too much time—but it



is also the checks and balance. If we had it all under one particular umbrella act then we might have a problem with people who have their guardianship being imposed and an advocate also working under the same act. Is there a check here and a balance or is there a conflict of interest? It is really necessary to have one bill that is an arm's-length relationship to ensure that people's rights are not being taken away unnecessarily and to protect their rights.

**Mr Sauvé:** If I could add one final point on this issue, that throughout the development of these initiatives—and this goes back a number of years—there has always been a tripartite working group working very closely on all these issues from the Ministry of the Attorney General, the Ministry of Health and the Ministry of Citizenship, ie, the Office for Disability Issues. As this has evolved, particularly in the last 18 months, these three parties were working very closely together. The legislation, as a matter of fact, was drafted by the same individual, so in so far as there is complementarity and linkages between the three pieces of legislation, I think they have been made. They are related but they are distinct as well.

**The Chair:** Thank you, Mr Winninger, even though most of the responses went to Mrs Sullivan.

**Mr Malkowski:** You do not have to answer my question but maybe staff would be better answering it. It is important to remember to respect the rights and wishes of the disabled person, and we have the different categories. It is important to clarify the role of the advocates so they do not take the rights from the disabled person. I think that is important. We have to clearly define those three bills—that is the point I wanted to make—so they do not lose their rights.

**Mrs Sullivan:** I want to pursue once again a thought from Mr Poirier's question. It struck me that the facilities governed under the Advocacy Act include the list included on the back of Bill 74. I notice that health care, patient care or residential care provided in a home setting or a non-institutional environment is not included. I also noticed that when you were reading your consultative list a lot of these sectors were not included in your consultative agenda.

The other thing is that, as you look at the facilities in the Advocacy Act the advocates have special power of entry, access to documents, and seeing the vulnerable person. In the Consent to Treatment Act a very different route for the advocate comes into play. It includes very different settings defined in this act. It includes health practitioners who are not included in this act. The Consent to Treatment Act applies to every practitioner—I suppose now, because it would be amended, there is provision for amendment—under the new Regulated Health Professions Act. This does not. There is a specific schedule of access.

I suppose what I am saying is that is inconsistent between those two acts. If the same person wrote these acts, I guess he did not have the right chart up on the wall. As well, there is a very different definition of when vulnerability and incapacity kick in. Who makes the judgement? Can you tell me how you come to terms with those varied differences in approach and definition? Why was the consultation not done that includes all the institutions as well

as home care deliverers who are in fact going to be affected by these pieces of legislation?

1750

**Ms Spinks:** If I could just comment, all three acts are addressed to related but quite distinct issues. Under the Consent to Treatment Act, I think you are referring to the wide scope of health practitioners who fall within the category that must follow the rules regarding informed consent and the appointment of substitute decision-makers and so forth. I think that the role of the advocate in that legislation is really quite clear. It is quite well defined, among other things, in section 10 of that act. I do not see any conflict with this.

The definition of "facility" is referenced in section 16 or 17 in order to kick in the access to record provisions and so forth that are not necessarily applicable to the function that an advocate is performing under the Consent to Treatment Act or indeed under the Substitute Decisions Act with relation to guardianship. They are related but they are in fact quite distinct. What this does is to cover the scope that is necessary for the provision of advocacy under this act. I think the other acts are really quite specific in their own right.

**Mrs Sullivan:** Let me give you an example. Under the Consent to Treatment Act dental technicians, for example, are included. Under this act, providing power for the advocate to have access to the premises, to see the particular individual on the premises of the facility, the Consent to Treatment Act indicates that the advocate has to come in if a health practitioner defines that person as incapable, yet in the Advocacy Act you do not allow or you do not specify that one of the facilities to which the advocate has access is the dental office.

**Ms Spinks:** I think the provisions of the Consent to Treatment Act look after it.

**Mrs Sullivan:** No, they do not.

**Ms Spinks:** They in fact require that the patient be advised of the right to meet with the advocate. It is also an offence to restrict that relationship. I think that leads to a right of entry, in effect. The physician or the health care practitioner who is making that finding is obliged to facilitate that meeting.

**Mrs Sullivan:** I suppose to a certain extent we are going back to a question I think was asked earlier relating to access to confidential information and clinical records. If a person is vulnerable and has been described, defined, judged, to be incapable by a health care practitioner certain things kick in. One of the things that kicks in is that the patient has to be informed of his right to an advocate. The advocate is brought in to define where that patient should go. That happens in various scenarios under the Consent to Treatment Act.

Under the Advocacy Act it happens in different scenarios. There are different rights for the advocate to have access to clinical records. If the advocate is there to explain rights, in many situations, if the patient is, say, schizophrenic and decides in a dentist's office that the dental technician who has made the diagnosis, if you like, of incapacity should not have made that diagnosis, is the advocate going to



respond in the same way in that circumstance under the Consent to Treatment Act as the advocate will respond under Bill 74, the Advocacy Act? It appears that there are different functions and roles for the advocate in different circumstances.

**Ms Spinks:** I think to some extent that is true, but that would not preclude the advocates from acting on behalf of that individual if they wanted.

**Mr Sauvé:** There are three types of advocacy.

**Ms Spinks:** Yes, the roles are very distinct in relation to each type. Section 10 of the Consent to Treatment Act is very specific as to what job the advocate has to do.

**Mr Sauvé:** I think we have to remember too the three distinct types of advocacy. What would happen largely under your example in terms of the consent to treatment is that it would be strictly rights advice as opposed to the other two types of advocacy that are envisaged under the act, the individual advocacy and the systemic advocacy, which require these rights of entry and access to records and so on to those institutions that would be specified in the schedule. In terms of just providing rights advice, telling persons that they have the right to either accept or reject this course of treatment or whatever their options are, it is quite a different kind of activity than the other two types of advocacy that are envisaged in the Advocacy Act.

**Mrs Sullivan:** The rights advocacy in both those cases is inconsistent. Between the one act and the other act, there is an inconsistency in what the advocate has the authority and responsibility to do as an advocate for the patient's rights and an information source.

**Ms Spinks:** What specifically do you see as inconsistent?

**Mrs Sullivan:** I see the rights to entry, and the involvement of access to warrants as being quite different.

**Ms Spinks:** Again, they are very different functions.

**Hon Ms Ziemba:** For rights advice you would not need a warrant.

**Mr Sauvé:** No. Clause 7(1)(d) of the Advocacy Act, which says "provide advocacy services as required by any other act," eliminates any discrepancy between the consent

legislation and this particular legislation. Why I think clause 7(1)(d) does not specify "provide advocacy services as required by the Substitute Decisions Act and the Consent to Treatment Act" is because the advocacy legislation was introduced for first reading on April 18, and the other two bills were only introduced two or three weeks or maybe a month later. It is impossible, according to the advice we got from the legislative counsel, to refer in an act to acts that have not yet been introduced. That is why that language would be "as required by any other act." I presume, as we go through this process, that this clause will be amended to specify the other pieces of legislation that would be applicable in this case.

**Ms Spinks:** I think they all work really quite well together, but as I understand it we are having a briefing at the end, after each of the acts has been presented, which will tie the three pieces of legislation together.

**Mr Sauvé:** And the charts.

**Ms Spinks:** The various languages and so forth will be explained maybe a little more clearly at that time.

**The Chair:** Thank you. Noting the lateness of the time, Mrs Sullivan, any further questions? You have one more question.

**Mrs Sullivan:** I do not have any more.

**The Chair:** One further question, Mr Wessenger.

**Mr Wessenger:** I am just wondering why correctional facilities are not included on your schedule. You could have vulnerable people in a correctional facility.

**Hon Ms Ziemba:** It is included in the act, though.

**Ms Spinks:** It is in the schedule in the Ministry of Correctional Services Act.

**Mr Wessenger:** So they are in the schedule. Police detention facilities is what I was thinking of.

**The Chair:** Thank you, Mr Wessenger. On behalf of the committee I would like to thank the minister, Ms Ziemba, Ms Spinks, Mr Sauvé and Mr DeMarco for appearing before the committee. We will adjourn until 3:30 tomorrow.

The committee adjourned at 1800.

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## Official Report of Debates (Hansard)

Tuesday 10 December 1991

## Journal des débats (Hansard)

Le mardi 10 décembre 1991

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 10 December 1991

The committee met at 1543 in room 151.

### ADVOCACY ACT, 1991 AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

**The Chair:** I call this meeting of the standing committee on administration of justice to order. Pursuant to standing order 123, the clerk has received designation from the Progressive Conservatives that there will be a subcommittee meeting immediately following this meeting.

### MINISTRY OF HEALTH

**The Chair:** Today we will proceed with Bill 109, the Consent to Treatment Act. We have the Honourable Minister of Health here to give a presentation. We will have a briefing and then follow with questions and answers. Would the minister proceed, please?

**Hon Ms Lankin:** The task ahead of you is a challenging one. Certainly we are very interested in the responses you will hear from the public with respect to this piece of legislation, as well as how it relates to the other pieces of legislation in front of you. There is no doubt that there will be much for you to deal with in all the legislation. The way the bills relate to each other I think will be a complicated but important challenge because we see what we hope will be the passage of these bills down the road as being a historic event bringing about the connection of advocacy, consent to treatment and substitute decision-making.

The consultations that have taken place between the ministries and among interest groups have helped us shape these pieces of legislation. We think we have covered all

the bases but it remains for you to take up the discussion and examine the detail of these bills. I want to say at the outset that concerns have been raised, particularly with respect to Bill 109, about some of the inadvertent effects perhaps. There has been some media coverage. We have taken some time to try and talk to people again about those issues that have been raised. As I make my remarks, I hope to indicate areas where we think there is some easy resolution, and areas where we think you as a committee could be very helpful in looking at amendments and clarifications in the legislation to ensure the intent of the bill is carried out.

The goal of this legislation is clearly to establish the right of each person in Ontario to make his or her own decisions about health treatment. The act also provides a way to make decisions for those who, at the time health treatment is required, are not capable of giving consent. That can be for a variety of reasons: unconsciousness, shock, the effects of drugs or debilitating disease. Those are all examples.

We believe there is a need for this legislation. Currently the Mental Health Act and some of the regulations under the Public Hospitals Act include some rules on consent for patients in hospitals but, unfortunately, these two acts are not consistent. Ontario has currently no consent legislation that applies to other settings like services delivered in nursing homes or doctors' offices, clinics or private homes, where much of our health care delivery is done—in fact, probably an increasing amount in the future. Further, the laws that exist do not clearly entitle family members to give a substitute consent for a mentally incapable adult patient outside a hospital setting.

With more and more care being delivered in community settings, as I indicated, we need legislation that will ensure all Ontarians, no matter where they receive care—and these are key things—have the same right to be informed, the right to make their own health care decisions and, if mentally incapable, the right to have someone make decisions on their behalf.

In developing the proposed consent to treatment legislation the ministry sent a consultation paper to more than 150 consumer and provider groups. They responded with about 60 briefs and submissions. In an outreach effort to interest groups, ministry staff also undertook about 30 speaking engagements to talk about the legislation and answer questions. As I have indicated, since introduction of the bills we have done further consultation around some of the points of controversy and questions that have been raised to try and get guidance from interested parties out there about what might be resolutions or clarifications to some of those questions.

In general, we found broad support for the principles of consent to treatment embodied in the legislation. The

legislation and the premise for this begins from the common-law rules of consent, the rights and obligations that have already been tested and affirmed in court decisions, and used those common-law rules to build a standard set of rules to guide day-to-day practice. There is an obvious question: If these rights and obligations are already part of common law, why do we need to develop the legislation?

Again, we believe there is a very good reason. When the ministry listened to what consumers and providers had to say, it was very clear that the common-law rules on consent are often ignored—perhaps not known. Certainly they are not in everyday, common practice in many health care encounters that patients have. Probably it also can be said that the common-law rules are difficult to understand and difficult to interpret, vague and not clearly set out. With the Consent to Treatment Act, rules, rights and responsibilities will be clear and available to everyone. That is certainly our goal and the committee work will help us achieve that goal.

Over time, I believe this legislation will not only encourage health service consumers to exercise their rights, it will improve everyone's ability to make decisions about the type of treatment they receive. I just want to take a moment to say I really believe this is important in terms of the future of delivery of health care services in this province. We have a situation in which the relationship between patients and health care providers is often not a balanced relationship. There is a lot of mystique about health professions and the delivery of those services.

As patients and consumers of those services we often do not inform ourselves to the fullest in terms of the implications for health, or the choices or alternatives we may have. I think this is part of the shift required in the health care system, for all of us to take greater responsibility for informed decision-making about health care services.

1550

I understand the committee will also be hearing from Mr Sterling next week and, as I have said before, we greatly appreciate Mr Sterling's contribution of highlighting the importance of living will legislation. We believe the three government bills we are introducing will cover and safeguard those situations and much more than what is attempted in Bill 7 and Bill 8. I think it is appropriate that Mr Sterling will have an opportunity to comment on these areas and he has done a lot of work over a number of years in bringing forward these principles. We agree with the principles he is trying to achieve and we think the legislation will accomplish that.

A power of attorney for personal care includes the type of instructions people now give in the case of a terminal illness in a living will, as is being suggested, but it goes far beyond that to deal with the care and treatment we want at all stages of our lives. It ensures that anyone placed in the role of making decisions about medical care for another will be able to act according to that person's wishes. Even if it is not in a terminal, living will situation, being able to give that kind of advance directive about the way you would like health care and treatment decisions to be made, if you are incapable at that particular moment of giving those directions yourself, gives us that sense again of being

able to control our treatment and the decision-making about our treatment.

The ultimate intent of this legislation is to ensure that all who are able to give consent have the information they need to do so, and to ensure that those not able to decide for themselves receive the type of care and treatment they would have chosen if they had been able to at that time.

We recognize that for the legislation to be effective we are going to have to inform people about rights and responsibilities and we are committed to undertaking that task.

Before we proceed further, I want to comment on some of the main points in the proposed Consent to Treatment Act. In a few cases, which I will indicate shortly, I am particularly interested in having a thorough airing of the issues as it goes through committee stage and I hope we can find the appropriate balance on some of these complex matters. As I have indicated in another committee situation with respect to the Regulated Health Professions Act, sometimes the complicated balances that need to be struck can truly be arrived at by commonsense consensus from a group like this hearing from all the affected parties. I am quite willing, where that kind of airing and exploration of the issues is done, to try and make the appropriate amendments. I want the committee to be assured that not only am I willing to make those kind of amendments where they are appropriate and where we can get the correct balance struck, but I am actually seeking your assistance in some areas that I will highlight for you.

First of all, the proposed consent to treatment legislation codifies the common law for all Ontarians, so that what was in common law now becomes statute and they can be fully informed and decide to accept or reject a health service.

In the June 1991 Ontario Court of Appeal decision in the case of Reid and Gallagher, Mr Justice Robins summarized the principle of informed consent, and I quote:

"The right to determine what shall, or shall not, be done with one's own body, and to be free from non-consensual medical treatment, is a right deeply rooted in our common law. This right underlies the doctrine of informed consent. With very limited exceptions, every person's body is considered inviolate and, accordingly, every competent adult has the right to be free from unwanted medical treatment. The fact that serious risks or consequences may result from a refusal of medical treatment does not vitiate the right of medical self-determination. The doctrine of informed consent ensures the freedom of individuals to make choices about their medical care. It is the patient, not the doctor, who ultimately must decide if treatment—any treatment—is to be administered."

Clearly, that is an important last statement, that it is the patient who ultimately must decide—not the practitioner or the doctor—if the treatment is to be administered.

To provide safeguards for people who have been assessed to be mentally incapable of making those decisions and giving informed consent, under the Consent to Treatment Act they can meet with an advocate who will explain the implications of the incapacity finding. The advocate will also discuss the person's right to have a finding reviewed.



There has been feedback on this, and I think there is need to clarify that for the purposes of the Consent to Treatment Act, the advocacy will be a narrow rights-information function. It is not a broad advocacy function, which is the main mandate of the Advocacy Commission and the other piece of legislation you are dealing with. Here we are talking about rights information and advocacy in that narrow sense. That certainly has always been the intent of the Consent to Treatment Act.

People will also have the right to request a hearing before the Consent and Capacity Review Board, a formal independent tribunal that will be established under the act. They can also ask the advocate for help with this process. Board decisions can be appealed to a court.

Some people are concerned that the process of assessing people, deeming them incapable and arranging the meeting with an advocate will cause unreasonable delays and may keep people from getting treatment they need. I know there are a number of health care professionals and hospital administrators who have raised those concerns.

Let's deal first of all with the most obvious of situations that people would have concerns about, that is, the situation of emergency treatment being required. The consent-to-treatment legislation does take emergency situations into account. If a health care provider believes a person will suffer serious bodily harm if treatment is delayed, the provider can give treatment without consent. But even in emergency situations, the health practitioner must respect the right of the patient to medical self-determination. Giving treatment is not permitted if the health provider knows the person would refuse it when mentally capable, if the individual had given advance directives or if this is a medical practitioner who has a history of this patient or has the patient's indication somehow clearly and appropriately conveyed to him.

Let me say at this point that there is still some debate about how we define an "emergency." I think that is important and that should be talked through here through the committee stage. I would welcome suggestions on improving and clarifying. When we go through the briefing, perhaps Gilbert can elaborate on that, but the question of whether or not "emergency" should be defined only if the health care provider believes the person will suffer serious bodily harm—what about prolonged and serious pain the person may be suffering? There are perhaps some other definers that might be a better clarification. We can talk about that as we go through, but it is an area that I think the committee will hear about and should take a look at.

Also, based on responses from various interest groups, both consumers and providers, I am recommending some changes to the emergency provisions and will certainly be interested in receiving further input through the committee hearings. It has been pointed out that a number of serious health risks would not materialize within 12 hours and that therefore the 12-hour time frame that is contained in the legislation now should be deleted.

The urgency aspect is sufficiently conveyed by the need to act "promptly," so I would certainly be looking to make that kind of amendment. As I mentioned, I think as you go through hearings you will hear from people on that.

Also, as I was indicating, we have come to the conclusion that treatment necessary to alleviate severe pain should be permitted by the emergency treatment provisions, so we will be looking for clarifying wording on that.

We would also like to clarify that emergency treatment will not be discontinued in those exceptional cases where no substitute decision-maker is available within the 72-hour time period stated in the act. As has been brought to our attention, we could have a case of someone perhaps in a remote area being serviced on an emergency basis with no opportunity to contact and to receive some information from a substitute decision-maker within that time frame. Perhaps this is life-sustaining treatment that is being offered. Should that be cut off at 72 hours? We think it needs to be clarified that this would not be the intent. We have to have a bit more flexibility around that.

There is some concern that even in non-emergency situations, requiring meetings with advocates will cause unreasonable delays and unnecessary treatment delays. There are the hospitals' concerns about backlogs. There are doctors concerned about people coming for appointments and that perhaps they cannot carry out the medical treatment within the time that has been scheduled. Does that mean a lost appointment and the person coming back? What kind of delays might we be facing if a person is deemed to be incapable and that requires a meeting with an advocate?

#### 1600

Again, let me be clear here that I would welcome discussion on ways to streamline the process. But bottom line, we still want to provide the appropriate safeguards and protections. We think it is possible that an alternate approach would still protect the person's rights but not impede health care, and we are open to considering alternatives.

One example that has been suggested to us is that once a person has received the rights information, repeated meetings with an advocate may not always be required. Some people may also be concerned that the review board hearings could cause unnecessary delays. Here we have reason to believe, based on past experience, that there is only a small percentage of people who will challenge their assessment and ask for a hearing.

Based on our experience to date with the Mental Health Act, which has similar provisions, we can let you know that of 54,000 admissions in 1990 to psychiatric facilities, where rights adviser programs have of course been in place for the past six years, there were only 78 review board hearings on findings of incapacity. So it has not been our experience that there is a great move to challenge this finding, but we believe that to sustain the right to challenge a process is important.

As you will hear during the Attorney General's presentation, people with mental incapacity can be assessed under the Substitute Decisions Act and a substitute decision-maker can be appointed to make personal care decisions on their behalf whenever the need arises. In that situation, the problem is taken care of already because there is a substitute decision-maker there and people like health care practitioners will simply refer treatment decisions to the



guardian. There will be no need to reassess mental capacity to give consent each time the person needs health care.

Another concern that has been raised is the potential cost of the advocacy requirements of the Consent to Treatment Act. Again, looking at our experience with rights advisers in psychiatric facilities and their duties, informing patients of their rights when they are found to be mentally incapable does not appear to us to be expensive. We would be building on something that is already being done in the psychiatric hospital setting at this point in time. We think that although these are difficult economic times, this would be using resources wisely. There is a base program there already. We do have experience with this.

Recruiting and training people to fulfil the role will be the responsibility of the Advocacy Commission, and certainly this kind of rights advice will represent only a small part of the commission's broad advocacy role. That was the point I made earlier, that we see the role of the advocate under this legislation as a narrow advocacy right: rights advice, rights information.

There is one other point about the Consent to Treatment Act that I would like to make, one that I think the committee will hear substantial response from people on. Under the act at this point, the recommendation is that people aged 16 and older are presumed to have the mental capacity to make their own treatment decisions. However, age 16 is only a reference point in that situation. The intent of the act is to ensure that those who are capable of giving consent have the right to do so, including those who are under the age of 16. However, it has been clear in discussions I have had with groups that there will be public health officials, as one example, who will be concerned that some young people will be prevented from seeking advice about birth control or sexually transmitted diseases or other health services, and these are now legally provided to mentally capable young people on the basis of common law consent right.

It is not the intent of this new legislation to impede in any way a young person's access to health care. The act allows health care providers to assess the individual situation and make a determination that a person who may be under the age of 16 is mentally capable of making certain treatment decisions with respect to the treatment being discussed and recommended.

The government recognizes that on this issue there are several points of view, and I want to ensure that all the options are fully examined by the committee. There are differing points of view out there that we are continuing to hear. Some people would prefer to have no reference to age in relation to mental capacity, just to allow the common law situation to exist and to rule, and to evolve or be tested as well. Others have indicated that they have a preference for an age. Some have agreed with 16; some have said the age should be 14; some have said it should be 12. Those reference points, with the ability to determine someone younger as being capable, vary in people's opinion, so I think you will hear about this issue.

I want to emphasize that it was never the intent of the legislation to see very, very young people making their own treatment decisions, but neither is it the intent to have

young individuals who are capable of making treatment decisions being denied that right. There is a balance there to be struck. As I said, I am sure you will hear much about it.

On the issue of very young children making their own treatment decisions, you will recall a newspaper article in which someone suggested that one flaw with the legislation would be that a doctor would have to assess whether a three- or four-year-old child who was indicating somehow that he or she was refusing to receive a needle, for example—whether that somehow was indicating that the child was expressing a refusal to give consent to health treatment. It then puts the provider in a position of having to make determination around that.

Certainly the legislation does not envision those sorts of situations. The intention of the legislation is to create a framework around consent to treatment that is reasonable and consistent. So again, as you hear about these issues and whatever amendments the committee determines are appropriate to try to clarify these points, I would welcome that kind of feedback, but I want you to be clear that this certainly that was not the government's intention.

Before we go to the briefings—we will be doing the briefing and then we will be going to questions—I want to point out that there is nothing in the Consent to Treatment Act which authorizes substitute decision-makers to consent on behalf of mentally incapable individuals to non-therapeutic procedures such as sterilization for contraceptive purposes, organ and tissue donation and clinical research. These are procedures that have no direct medical benefit for the individual, non-therapeutic procedures. This is an issue of great controversy, as I am sure all members here will be aware. Again let me indicate that nothing in the act authorizes a substitute decision-maker to make those kinds of decisions on behalf of a mentally incapable person.

I am pleased to announce that Professor David Weisstub, who is the author of a widely acclaimed report on mental competency and a well-known expert in the field of law and psychiatry, has agreed to study and prepare a report on this issue. He was appointed on July 15 and will complete his work by the summer of 1993, so that issue is apart and separate from this legislation and will be dealt with following the receipt of that report.

In closing, let me say that I do look forward to the discussions that will take place at these hearings and to working with members of this committee to refine the act.

A number of ministry representatives will be attending the hearings, and they have been involved from the very beginning in developing this legislation. I do not think I gave a time reference, but the consultation certainly started before we came into government. This is an issue that certainly has had a long history of discussion, in the Mental Health Act and other advocacy concerns that have been around for a long time. We are pleased to be able to be involved, but particularly now to bring it together with pieces of legislation like the Substitute Decisions Act and the Advocacy Act, and we think the blend of the three is important.



1610

The ministry representatives who have been involved in the development of this from the beginning are very familiar with the issues and will certainly be on hand throughout your deliberations. I urge you to take full advantage of their knowledge and expertise. They will offer their assistance to the committee whenever they can.

So you know who they are, let me introduce Gilbert Sharpe, director of the ministry's legal branch. He has a long association with this particular legislation. He will be doing the briefing and helping me answer some of your questions later.

Juta Auksi and Giuseppa Bentivegna are both ministry staff and they will be in attendance to help and answer any questions you might have. I also say thank you on your behalf to Brenda Pearce, an articling student who put together the annotated binders you have that will help you through it. All these people will be willing to help.

Many of these individuals have been involved in much of the consultation that has gone on involving the groups out there, and also Theresa Firestone, who has been very involved through the whole consultation. Theresa is here and can also give you indication of whom we have met with and talked to. If you think we have missed someone, let us know and we will try and make sure we help feed that into your process.

As the hearings proceed, I or my parliamentary assistant, Paul Wessinger, will be in attendance and we will certainly be listening closely to the discussions. We believe these are very complex issues the committee will be dealing with. The discussions will require a great deal of careful thought and reflection on the part of the committee members.

It is obviously, therefore, very important that we analyse carefully the presentations, views and opinions that will be expressed here as the hearings proceed. There are some points within this legislation that will raise serious differences of opinion because of people's life experiences. We know that even the rules of the Mental Health Act as they exist now—the difference in opinion between consumers, survivors and some family members around the way the act works to help or impede people seeking treatment or choosing to deny consent to the treatment is a point of controversy. Those points of controversy will be raised squarely here for the committee to deal with.

I certainly look forward to the discussions and, as I have indicated, I remain open to considering alternative approaches that reflect the intent of the act. Our responsibility is to the Ontario health care consumers, their rights to be fully informed and to know what their health treatment options are.

If we can at this time proceed to the detailed briefing on the act itself, we can then move to questions and answers. I will turn it over to Gilbert Sharpe, who will be taking us through the briefing.

**Mr Chiarelli:** What is the extent of the detailed briefing?

**The Chair:** How long will this briefing take?

**Mr Sharpe:** It is up to you, but I thought I might go through the act and highlight some provisions and put

them in perspective for you. The binders give you a detailed analysis of where everything is. Later on, in the new year, we are going to do an integrated briefing of the four bills.

**Hon Ms Lankin:** Mr Chiarelli, if it helps, it is my intent to stay through the briefing. I will be here for the question-and-answer period. I am not leaving.

**Mr Chiarelli:** I am just thinking of the time available. My personal opinion is that I would rather have some time, or the full time, to question you now. We can always have your officials back to go through some detailed briefing clause by clause or section by section.

**Hon Ms Lankin:** We are not looking at it clause by clause at this point. We want to provide an opportunity for members of the committee to have some overview of highlighted sections of the act. This is not a clause-by-clause briefing.

**Mr Chiarelli:** How long will it take?

**The Chair:** Yesterday, the briefing took about 20 minutes.

**Mr Chiarelli:** How long will it take today?

**Mr Sharpe:** Again, what I had in mind were highlighting provisions. As I went through, there could be questions in the context of the issues I raised rather than just pointing to sections. That might not be too productive.

**Mr Chiarelli:** If there were no questions, how long would it take?

**Mr Sharpe:** If there were no questions, it would probably take about one half-hour.

**The Chair:** Maybe we could do a few questions first if they are generated right off the bat.

**Mrs Sullivan:** I think many members of the committee would like to present general questions to the minister relating to the overview of the legislation before we move into details.

**The Chair:** That is the way we proceeded yesterday. Maybe we could do some questions now.

**Hon Ms Lankin:** I am in your hands. I suggested proceeding that way at the suggestion of the clerk and I agreed with it. If that is not what the committee wants, that is fine with me too.

**The Chair:** Okay. We will proceed with a few questions right away. Mr Chiarelli.

**Mr Chiarelli:** I have a particular question that for me, in any case, will put the legislation in some context because particular representations have been made to my office and I believe to a number of other MPPs. I would just like to know how you would describe the concerns of the Ontario Friends of Schizophrenics, who have been following the development of this legislation very carefully and in fact have commented and made representations on some of the things you have pointed out in your briefing. Are you familiar with their concerns and how would you describe their concerns?

**Hon Ms Lankin:** I actually attempted in my statement to raise this issue for the committee. There are differing opinions with respect to the workability of some of the rules around committing to treatment in an involuntary

situation as it exists under the Mental Health Act now, and I would think the group you referred to would feel its challenge becomes even more difficult under the provisions of the legislation here. I think this is a very delicate issue of balance that needs to be struck.

Clearly, we want to have a situation where every person who is and can be deemed capable of making an informed decision about consent to treatment is afforded that right. The response that members of Friends of Schizophrenics will feel is that they find themselves, in many situations, trying to do the best they believe they can to get treatment for a family member. That person, as a result of the disease process they are experiencing, may express a denial of consent or a refusal to consent at this point which leaves the family feeling totally helpless about helping that individual to get the treatment they believe he or she needs.

There are two competing issues there—not competing in the negative sense, but in the sense that there has to be a balance struck. I hope I have indicated some sensitivity to this issue. We will be looking for the comments coming forward from these groups to committee in the hearing stage and from the committee's discussions and debates to assist in striking that balance.

**Mr Chiarelli:** I do not agree with anything you have said with respect to the factors that have to go in to determining appropriate legislation. What I have concern with—

**Hon Ms Lankin:** I am sorry, did you say you do not agree?

**Mr Chiarelli:** I agree with what you said, but I do not agree with the fact that we have an actual bill before us. Given the nature of the concerns, the nature of the discussions, I wonder if it were not appropriate to be perhaps discussing a draft bill rather than a bill before a committee which is a live, active bill for which we are going to go into clause-by-clause and presumably introduce it into the Legislature for final approval.

**Hon Ms Lankin:** I suggest, as it was my experience in dealing with various complex series of bills under the Regulated Health Professions Act where we have some of these difficult balancing decisions, the best way for us to proceed is to hear from the people involved and, as legislators, make some commonsense decisions through discussions and the opportunity to have exchange with those people.

That can be done through the committee stage. I have indicated an openness to make appropriate amendments to try and seek that balance where there is consensus and where the opinion emerges from the process of discussion. It is also my experience that where that discussion starts to happen in a forum like this, we may be able to get the parties who have differing points of view together to have some discussions and, at some time, perhaps to arrive at a common approach as well.

**Mr Chiarelli:** The health professions legislation, as I understand it, was discussed in draft form before it was introduced in the House as a bill, and it was subsequently introduced as the bill. If I were to go through your remarks, I have just highlighted in a few places some words and phrases that give me concern with the fact that we are dealing with a live bill rather than, as occurred in the

health professions process, a draft bill to deal with in the first instance.

1620

**Hon Ms Lankin:** Again, Mr Chiarelli, I am sorry the amendments were all made when there was live—

**Mr Chiarelli:** I am not finished yet, minister.

**Hon Ms Lankin:** Okay, but the amendments were all made when there were live bills before committee.

**Mr Chiarelli:** Exactly.

**Hon Ms Lankin:** I am trying to assure you that I am very open to those amendments, but this may be a point of disagreement. The fact is we have a live bill before us.

**Mr Chiarelli:** I agree, and I am going to make a request with respect to that shortly. In any case, I want to point out some of the phrases and comments you have made with respect to this live bill, if I can put it that way.

On page 4: "I am hopeful we can find the appropriate balance on these complex matters." We are dealing with a live bill.

Another quote: "I recognize there is a need to clarify for purposes" etc.

A further phrase on page 5: "Some people are concerned that the process of" etc.

Page 6: "There is still some debate about how we define" etc.

Similarly, on page 6: "I am recommending some changes."

Again on page 6, further down: "Delays in treatment in non-emergency situations: There is some concern that"—and you are addressing that concern.

You are saying further down on page 6: "I am open to considering alternatives."

Also you say, "Some people may also be concerned" with respect to another issue.

You say, "We have reason to believe that" on page 7.

Page 7: "Another concern is the potential cost" etc.

The whole phraseology—I can go on: "Public health officials may be concerned," and "on this issue there are several points of view," etc.

I just think that when we are dealing with matters of personal freedom, matters of life and death, we are dealing with very emotional issues. I practised law for 17 years before I was elected in 1987 and I was in circumstances where I had to deal with some of these issues. You know now, by experience, because of the health professions legislation the type of pressures and representations that can be brought to bear on health-related issues. I repeat that the process was started by dealing with a draft bill, precisely because they were emotional, legal issues, issues of livelihood, of professions, that affected people in a very personal way. Because of those concerns, particularly highlighted by the Friends of Schizophrenics—and it is all right to say we will look at options and alternatives, etc, but the solutions may be a lot more difficult in finding than an amendment to a bill.

What I am really saying is that I disagree with the process as an MPP, and I would strongly urge that the bill be withdrawn and reintroduced to this committee as a draft bill so that people will have a sense that the debate will be



fuller, more open and the process will be more amenable to change.

That is a suggestion I am making. I do not expect you to follow it, but I certainly want to put it on record because I think you will find that in the process we have now you are going to end up with a political problem, a problem in the community, with health professionals, particularly in the mental health area. I am really giving you advice which you are obviously indicating you are not inclined to take, but I think you will want to consider the advice. It is very easy to withdraw the bill and bring it in here as a draft. You can always reintroduce it and go the process as you did with the health professions legislation.

**Hon Ms Lankin:** Are you finished now, Mr Chiarelli?

**Mr Chiarelli:** Yes.

**Hon Ms Lankin:** May I say in response that I find your comments about the phraseology odd. Quite frankly, I come to committee attempting to indicate a very open approach with respect to legislation and very respectful of the committee process where in a non-partisan way representatives of all constituents bring forward points of view and hear from various constituencies in order to bring their best advice to build the best legislation. I think the phraseology is very indicative of an approach I bring to dealing with legislation.

I think if you look at how I as minister dealt with the regulated health professions legislation, you will find that there was that openness to deal with amendments from various members of the committee and to try to work through, with groups, differences of opinion. I appreciate that you have a difference of opinion with respect to whether that would be fuller and would work better under a draft bill or a live bill, I understand that we may disagree on that. What I do assure you is that the process will have that openness and that I will attempt to make the best amendments and the best changes to the legislation that we can, based on what we hear and based on the committee's advice.

**Mr Harnick:** Minister, you referred in your remarks to some documentation I have from the Ontario Hospital Association, and I am glad you have described it the way you did. I am looking at the example where Julie is six years old and she goes with her mother to the outpatient department of the hospital to be immunized. She sees the needle and she starts to cry. That leads the doctor to believe he does not have consent, and he has to go and get the advocate, pursuant to, I gather, section 10. The advocate then has to come and speak to a six-year-old child and take instructions from a six-year-old child. Well, I have a five-year-old child, and you cannot take instructions from a five-year-old. I suspect you cannot take instructions from a six-year-old either.

I appreciate that the approach has to be one of common sense, and I think that is what you have said. How do we make this bill reflect a commonsense attitude so that health care providers are not in a position where they have to dogmatically follow a piece of legislation even though it makes no sense to do that, even though it is just taking things almost to the point of being ridiculous, and yet they say, "It's there, so I've got to do it"? How do we take this

bill and at least indicate that there is some flexibility in it, that there are some discretionary aspects to it, without destroying the character of the bill? I suspect Mr Sharpe has some ideas about that, but I think that is important, and I would like your views as to whether you are going to be amenable to this committee making some of those suggestions.

**Hon Ms Lankin:** Yes, absolutely. The intent of protecting that principle that individuals have the right to give informed consent whenever they are capable of giving that informed consent with respect to health treatment is the integral part of the bill and of the legislation that we must uphold as we go through this.

In the example you raise, there are some obvious first answers that could be given on how you could clarify that. We need to make a decision with the best advice of what is the best way. What we have heard from some people is that we should take the age out altogether and leave it at the common law, as it is now. The doctor is in the same situation currently, having to make a decision about whether a person is capable of giving informed consent, and I think most doctors would make the decision that the four-year-old or six-year-old child is not capable of giving informed consent.

If the legislation continued with an age as a reference point, with those above being given the presumption of capability, you could put in as a reference point an age for which those below have a presumption of being incapable of giving that kind of consent. That is another approach that could be looked at.

There will be, I think, points of view expressed around those kinds of options. We will look for advice, but I think that part of the legislation probably will have to have that kind of amendment, and I am certainly amenable to that. The general principle that you raised about showing flexibility—as long as we are looking at keeping the principles intact, absolutely. I think there are some areas where we want to ensure that it is a streamlined process and that it does not cause delays and grind the health system to a complete halt. We are not interested in that, so that kind of advice is welcome.

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**Mr Harnick:** The concern I have in this example, which I think is somewhat of an extreme example, is that a parent takes a child to a doctor for a purpose. The parent, because of parental obligations, has to get his or her child immunized. The schools say you have to do it; paediatricians recommend it; the hospitals recommend that it be done, and I guess the government as well. So the idea of a 4-year-old or an 8-year-old or even a 10- or 12-year-old instructing the doctor about what they want and do not want is somewhat impractical. I think we defeat one of the purposes of this bill if we permit these kinds of situations to exist where the doctors say at the end of the day: "That's what the law says and I'm not prepared to bend the rules in any way. I've got to follow what the law says."

**Hon Ms Lankin:** Again, I do not disagree with you. We do not want to leave ourselves open to a situation where malicious obedience can present us with all sorts of problems—or even a genuine concern of liability. In some



situations it may well be that. On the other hand, we want to ensure that we codify rights. We can look to what the common law provides now in terms of people's right to give consent or deny consent for treatment. We can see how that is not being carried out in current events as we speak. That right is not codified in any way. So on the flip side of it, we want to ensure that there are responsibilities that health care practitioners and providers are made well aware of and understand their obligation to carry out. There is the need on both sides of the point you raise.

**Mr Harnick:** Very briefly, did you say "malicious obedience"?

**Hon Ms Lankin:** You being a lawyer—I am not—you can probably help me with this. There is a tenet that you can take a point too far, and I think it is referred to as "malicious obedience."

**Mr Harnick:** I would not want to characterize a health care provider as being "maliciously obedient" because they are concerned that the act says one thing. Just the word "malicious"—

**Hon Ms Lankin:** That is the second that I raised. It may well be a concern in terms of liability or responsibility or a lack of clarity. We need to address all those points.

**Mr Morrow:** I just have one quick question. It is something that really kind of bothers me, and I am hoping you can clarify it for us. Given any situation where a person has left specific instructions and then for some reason later changes or writes to change that, what would happen in that case?

**Hon Ms Lankin:** If a person specifically changes his or her instructions?

**Mr Morrow:** Yes.

**Hon Ms Lankin:** If the person is capable of giving consent at the time and if he or she has given a prior direction, that becomes null and void by the fact that they have changed that direction. I think there is protection in that situation.

**Mrs Sullivan:** As you know, we have some extensive concerns relating to the complications of the overlap between the bills relating to advocacy, consent to treatment and substitute decisions. The consent bill in particular is one that relates as much to medical ethics and ethical decisions—moral decisions relating to medical/legal judgments—as it does to the issue of treatment itself. One of the things we are concerned with, and why we would have preferred either to see an omnibus bill in draft form or a separate open discussion rather than closed-door consultation, is that what we see when we read the three bills together is very serious overlap and conflict between the bills in terms of the nature of the delivery of service that is projected in the bills.

I note that you have indicated, for instance, that in the Consent to Treatment Act, the advocate is simply a rights advocate. In the Advocacy Act, the determination of the role of the advocate is not defined and will not be defined other than by regulation. We are very concerned about that. We feel that is something that should be open, upfront and written down, and something for which people can have a

right of input and discussion before, ultimately, that role will affect their lives.

The question of the priority of acts is a matter of concern as well. Does the Advocacy Act kick in over and above the consent act on occasion, or the Substitute Decisions Act kick in? Many of those details are quite unclear to people who have looked at these three combined bills and are trying to make sense of them in terms of dealing with people with whom they work: family, friends, people they may care for. Certainly care givers in various institutions have indicated that those are their concerns as well. In one bill, the Advocacy Act, we see that it is the facility that defines some of the functions and places of operation of the advocate. In the Consent to Treatment Act, it is the practitioner who is required to contact the advocate. What that means is that where the practitioner is operating relates to when the advocate is brought into the situation.

I am just using these as examples, because I think there are other examples of that kind of conflict and overlap that provide real concern. All of those areas of definition, by example, leave out the situation of the patient who is receiving care in an area outside an institutional setting. That is highly problematical, particularly as we move into a different delivery of health care services. We see in the Advocacy Act that the advocate will have a right to clinical and other records. In the Consent to Treatment Act, however, you have indicated that the advocate is there to be simply a rights advocate. If that is correct, why would the advocate necessarily have access to clinical records of the patient? The advocate is there for a particularly different reason.

I think this kind of clarification is very, very necessary. The training and recruiting of advocates—in the Advocacy Act it is left to regulation. Surely it is important, under the Consent to Treatment Act, that there be input under that very act for the participation of the advocate in a training program relating to the kinds of illnesses or diseases or mental incapacities that have been defined. That will surely have a lot to do with the way the advocate relays information and passes on details about the rights available to that person. I think those are things where there is a lot of difficulty.

In the Consent to Treatment Act, we have talked about the issue of children. You have raised that issue. One of the things we see, according to this act—a process matter as much as anything—is that the advocate kicks in before the substitute decision-maker does. Is that not part of the problem? The advocate has to come in before, indeed, the parent can say, "Yes, my child who is three years old should receive that inoculation."

The question of when the advocate is involved in the process can also be a matter of concern in cases, by example, of people who are accused of sexual assault, who are immediately taken to a hospital situation to have samples done under police guidance or a police investigation. At what point does the advocate kick in? Is that procedure going to be delayed?

**Hon Ms Lankin:** Sorry, could you just clarify that point for me a bit?



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**Mrs Sullivan:** I am suggesting that, for example, in the case of a person accused of sexual attack, where there is an investigation occurring and a medical treatment or course of treatment is necessary—testing, basically—to ensure that evidence is collected, what is the right to consent of the patient? When does the advocate kick in in those situations?

I do not think there is enough material included in this bill, for example, in terms of process to ensure that if it is considered to be a Lieutenant Governor's warrant, that it kicks in further. There is not adequate information in this bill in relation to that kind of situation. If the warrant kicks in faster, then that should be indicated.

I think people are very concerned about the issues and that is why we are saying there should be more discussion, more consultation, more information brought forward so people who have, who see and live with these conflicts and are trying to work through the morass of this combination of bills are able to bring these forward. Something that is workable and practical and that protects people's rights and that allows people to make decisions to the furthest limit of their ability is able to do that. I am afraid that with this process now we are going to get so bogged down in conflicting amendments which may fit well into one bill but, because one bill is on the table at a time, do not fit properly into another bill. Once again, through that process, the amendments are going to create even further difficulty.

I point that out to you because I have looked at this legislation. I have spoken with hundreds of people, it seems to me, about it. They have all raised issues of concern and I think those issues have to be on the table in a way where we understand that we are working towards a common goal, a common end. This does not do it for us.

**Hon Ms Lankin:** I do not think there was a question in there, but I will respond if that is okay, Mr Chair.

**Mrs Sullivan:** We are used to that.

**Hon Ms Lankin:** I always have an answer, you are right. I actually think it would be helpful, if people are in agreement, when I finish to move to the briefing because I think we can address some of those concerns you raise, maybe not all of them. We will have to see as we go through the committee hearing process. I think misunderstanding around some parts of how the legislation works or the bills and the provisions work together can be clarified.

For example, when you talk about the advocate's role, conflict between the role under the advocacy legislation and under the consent to health treatment legislation, I think if you look to the consent to health treatment legislation it is fairly clear what the role is, what we are talking about. First of all, you mentioned health practitioners and only in institutional settings. It is very clear that this legislation kicks in when a health practitioner is recommending or going to pursue a course of treatment. There is an obligation for that health practitioner to inform the individual and for the individual to be able to give informed consent. We are not talking about a restriction to an institutional setting. In fact, one of the very reasons for this legislation—

**Mrs Sullivan:** The Advocacy Act, though, limits the advocate to working in—

**Hon Ms Lankin:** In terms of a focus of work, a centre of work or the kind of ongoing role under the Advocacy Act, you may be very right. With respect to this legislation, the narrow and what will be a very small part of an advocate's job will be the kind of rights advice set out in the legislation.

As we go through it, you will see in section 10 what has to occur in terms of a meeting with an advocate. The advocate has to explain to the person what his rights are with respect to the finding of incapacity and to rebut that or to have a review board hearing. That, and the kind of assistance the advocate can give the individual, is set out. If you look to section 10, it is very narrow and direct.

When you talk about the ordering of a situation, about whether an advocate would have to be called in for the four-year-old child before the parent could give consent and where the substitute decision-maker is, again, I think if we deal with the issue Mr Harnick raised and that I raised in my remarks around the age, we have a clarification that I think resolves that concern. When we go through the briefing and as you go through the binder, we can point out the map of how the advocate and a substitute decision-maker and/or a guardian under the legislation, the Substitute Decisions Act, kicks in. I think it is a very clear and logical relationship.

I was confused about your comments about a person who is being charged with a sexual assault and the issue of needing to gather evidence quickly and would there be a delay. Perhaps I can seek some legal counsel advice on this to help us, but it is my understanding that an individual in that situation cannot be forced to undergo any kind of treatment situation. It would take a court order to do that under the current laws. I do not think we are preventing something from happening by this legislation but maybe, as we go through the briefing, I can ask Gilbert to address that as well.

**The Chair:** I was wondering if the government side would agree to proceed to the briefing now, and questions can be asked as we go along. Are we in agreement with that? All right. We will start the briefing now. Please indicate if you want to ask a question as we go along.

**Mr Sharpe:** As I said earlier, I am going to highlight some of the provisions of the bill, give you a bit of history, put things in context and attempt to deal with some of the questions that have been asked during our consultations, particularly over the last few weeks and around this table.

Starting on page 2, section 1 of the bill, the definitions section, I will just point out to you the definitions specifically of "advocate" and "health practitioner." "Health practitioner," in particular, is intended to be very broadly defined. When this bill was drafted the regulated health professions legislation had not been enacted and the notion here is to list all those regulated health practitioners. In addition we may have others that from time to time are added to the scope. The intention of this act is to cover the provision of health care services everywhere in the province in all settings and to have one set of rules on consent. As the minister indicated,



there are currently conflicting provisions in the Public Hospitals Act and the Mental Health Act, there is nothing in the Nursing Homes Act and there are common-law rules that are not really well understood and so on.

"Treatment," on page 3: Again, the intention is to be very broad. I point out subsection 1(2). The notion of partners is being recognized as a potential substitute, in addition to the traditional definition of "spouse" that we have used the last few years. There is also scope here, as there has been for several years in the Mental Health Act, for any competent individual to designate the person to serve as substitute should he become incompetent. It might be a close friend or anyone else.

Section 3—you will see a provision later on similar to this—specifically indicates that we are not attempting to alter the common law in a number of areas. Here the area is restraint and later on, as the minister indicated, there will be reference to non-therapeutic interventions for mentally incompetent persons.

Section 4 is the prohibition provision, the operative provision, indicating that one cannot provide treatment unless a mentally capable person provides consent or, if he is incapable, then his substitute does that.

Section 5 codifies the common-law elements of consent. It must specifically relate to the treatment, must be informed and must be voluntary.

**Mr Harnick:** If a doctor or a health care giver performs a procedure without consent, there is an offence provision in the act. I think it is later on in the act. The civil standard has been, by way of case law, that if you had been given the consent you would have accepted the treatment that was ultimately given anyway. Although there has been a lack of consent, the courts have not deemed that to be negligence. So you sort of have that double step in the common law today. Is that so with this act? Am I making myself clear?

**Mr Sharpe:** I just want to clarify that there is no specific offence provision in relation to section 4, so if a health care provider does not obey these rules it is not specifically an offence under this act. That is something some groups have indicated they want to discuss with the committee when they come forward in the new year.

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**Hon Ms Lankin:** One of the suggestions that has been made and that the College of Physicians and Surgeons of Ontario, for example, and other professional health regulated groups will be looking at, is whether an offence of section 4 could constitute professional misconduct under the Regulated Health Professions Act, but that does not take away from your question.

**Mr Harnick:** Now that you have codified this, there are all those cases that came out of Riebel and Hughes which went on to say that even if you did not get the consent, if you had been given the proper explanation you would have had the treatment anyway. You have one step in here but you do not have the second step, and this is now codified. How will that affect the way judges in the broader sense are going to interpret that kind of case law?

**Mr Sharpe:** What I hear you saying is the second step in the case relating to causation. In other words, the informed consent is flawed in some way; a particular material risk was not explained to the patient, but a reasonable person in the patient's circumstances would still have proceeded had they been told that material risk.

**Mr Harnick:** Exactly.

**Mr Sharpe:** I do not believe this act alters the causation issue in a negligence action. I think it is codifying the information side of Riebel and Hughes and Hopp and Lepp, but we are not attempting to deal with the evidentiary standards or proceeding with a civil action. It may be that in some cases, as you know, the courts have held that breach of a statutory duty is *prima facie* evidence of negligence and that it may assist plaintiffs by having it now codified in the statute if it can be demonstrated a material risk was not disclosed. But it still is a matter of causation in proceeding with the action open to the physician, say, if he or she is the defendant, to establish the test of reasonability in the patient's circumstances so that the causation as a link will not be there and the action would not proceed. I do not believe we have affected that.

Subsection 5(2) takes words from Riebel and Hughes and Hopp and Lepp in codifying the concept of informed consent, and subsection 5(3) deals with the notion, of course, that consent can be express or implied; in other words, implied by your actions. A patient holds up his or her arm to have a needle or takes his or her clothes off to have an exam, and that is tacit consent.

Subsection 5(4) recognizes the notion that we may be prescribing a consent form. There are some difficulties here and, as you know, the notion of having standardized forms that practitioners have to use is attractive on the one hand but on the other hand, in circumstances where the forms may not be readily available, if they interfere with the provision of care, it could be seriously detrimental. So we have put in a notion providing that we may be setting out a form, but that is something on which I hope, through discussions in committee when we hear from the different groups, some kind of final determination could be made.

**Mr Harnick:** Dealing with that little consent form you always see in the hospital records about one page long that says "I have been told everything," you know you have a volume of hospital records that thick, and there is one page signed and witnessed by a nurse. Oft-times you find out that in fact it is a standard form. They come in and it is signed at one time. The doctor may come and see the patient the night before the surgery and go over it with him at a totally different time. The act is silent about who should be obtaining the consent, and if there is a written form, who should be giving the instructions or the explanation and being the witness to that form. Oft-times one is done in a totally separate way from the other because the hospital has its problems with liability and consent and the doctor has his problems with liability and consent. It becomes a confusing issue. Have you directed your mind to that in any way?

**Mr Sharpe:** The difficulty I have always had with consent forms is that they are supposed to simply evidence



the discussion the doctor had with the patient, and of course they are there to protect the doctor. Later on, if there is a case that is grounded in lack of consent, the form can presumably be pulled out, although, frankly, I do not know of a case where a form has saved anyone. Ultimately, it has come down to evidence.

**Mr Harnick:** That is where you hear some really bizarre stories about how the form got signed and why it was signed and who it was signed in front of, and when did the doctor come by and when the anaesthetist came by. Did that have anything to do with the form? "Well, I did not even know that the form was connected to those people who came to see me."

**Mr Sharpe:** One of the problems, I think, in Ontario and in some other provinces that has complicated the matter is that for years under the Public Hospitals Act under the section dealing with hospital management regulations there is a provision talking about written consent to, say, surgery. Hospitals view that as a management matter, as a process situation, and often nurses have been told to go in and get this thing signed. Of course, nurses are reluctant to do that. It is supposed to be the doctor's responsibility to ensure again that there has been a proper informed consent.

In looking at this, as I say, we have been of two minds. Do you designate a form that provides for all of the major ingredients necessary for a proper consent? Of course some jurisdictions like California have gotten into pages of consent forms that are really useless, and now they are videotaping the consent process. Hopefully, we will never come to that, and no, we do not intend to do that in this act.

But the idea of prescribing a process as to who should do it I do not really think is necessary, because if you place the obligation on the health care professional to ensure that the patient has given him a proper consent, ultimately it is his responsibility to decide how he wants that evidenced. If he wants to use a form, that is his prerogative.

But if the committee decides as we proceed that it would be best to at least provide the basic elements of what goes into a consent, to require a form for certain types of particularly intrusive procedures, and to make it clear that the responsibility rests with the primary provider of service—because you do not want to get into a confusing situation where there are different providers involved with a patient and because of this act, and a requirement that there be a consent form signed to each element of the service, nurses and social workers and doctors and anaesthetists and everyone are worried about getting their own form signed. We certainly would not want to complicate the process in that way.

**Mr Harnick:** So it is the primary care giver, or his designated appointee, for those?

**Mr Sharpe:** That is the intention, and if as the committee process evolves it is decided that it would be useful to clarify that, as you know, we will have the draftsman with us and we could do something.

The provisions relating to capacity, starting with section 6, reflect again some common-law tests that have evolved. These are similar to the Mental Health Act, the description in subsection 6(1), and then section 9 that deals

with prescribed criteria, standards and procedures. The minister referred to Professor Weisstub's report on competency that was completed a year and a half ago. There are some standards set out there that we have been examining, and we are hopeful that when the committee reconvenes in the new year we will have some guidance we can show as to the types of processes and criteria.

This is a very significant issue now among all health care professionals, wanting to know how one assesses capacity and under what circumstances one can safely assume a patient is not competent. That is what we are trying to get at with section 6 and section 9 and at the end of the act with the regulation-making power. Again, we have tried to keep the specific heads of reg-making powers fairly brief, but we have set something out where we could prescribe standards criteria and a process for assessing capacity.

Section 8 is, as the minister indicated, one of the more difficult issues. It does relate to age of consent. I should say that the provision in section 8 has been in the Mental Health Act since, I believe, 1987. Here the question is at what point do we, if at a point at all, decide that a young person has become capable of consenting to treatment.

1700

The public hospital regulations have for many years dealt with the age of 16 and there is a certainty involved in that. The hospital knows that under that age they must look to a parent, guardian, society, whoever has legal custody of the young person. On the other hand, as we know, there may well be 14- or 15-year-olds who are factually competent to make their own choices, perhaps not for very complex procedures, but for some straightforward procedures, that they would have that factual ability that is being arguably denied to them now because of the operation of the Public Hospitals Act. So that is the dilemma. I know Quebec has had an age of 14 for some years.

If we codify the common law, we get into an evolving state of capacity which will be different for different young people, because kids mature at different rates. The complexity of the procedure may make it so that the young person is not competent to consent to certain things that are high risk and very complex, but the same person has competency with regard to other things. That is the common law.

It does create some confusion for providers, because there is a requirement that they make some judgements in each case. So what section 8 does is try to find a decent compromise by presuming that under 16 young people are not competent. If a young person demonstrates a wish to make a decision, then that person is to be assessed by the provider and, as the act is currently drafted in section 10—I think it is subsection 10(7), as we will see in a minute—is to be visited by an advocate in the rights adviser capacity, explaining to him that they can challenge this finding of incapacity before the review board, assuming that the provider finds him to be incompetent.

The intention was certainly not to deal with four- and five-year-olds. We would hope that common sense would dictate that at some age one can be assured that a very young person does not have capacity. But when you get up to 12, 13 and 14 that is not always clear, and it does become a very important human rights issue as to at what



age, at what developmental stage, for a young person are we as a society going to respect his rights to make autonomous decisions?

It is a very difficult issue. As I say, this was seen as a compromise. It is something that has been in one statute for some years and it seems to have worked reasonably well. If the committee decides after listening to representations that there should be some floor placed on the ability of young people to give consent, whether that be 10 or whatever, or perhaps as a compromise that the mandatory rights advice, when a young person demonstrates a wish to make a decision, should be restricted to a certain age, 10 or 12, the mandatory advocate visit, those, as the minister indicated, would be possibilities the committee might decide to recommend.

**Mr Poirier:** How does that apply to "but the presumption may be rebutted?" That implies to me that no matter what age you put in there, it may be rebutted. Under what circumstances? By whom? For what? When? What does the common law say so far about this? Is it the severity or the importance of the treatment? Is it the mental capacity of the child or the maturity of the child or the young person? This is a whole Pandora's box, is it not?

**Mr Sharpe:** You are quite right, it is not spelt out in any detail. But the notion we have in subsection 10(7) is that if the person is under 16 and has demonstrated a wish to give or refuse consent, you have the advocate going in. One could move an amendment that deals with a mandatory assessment by a health provider where the young person demonstrates a wish to make an autonomous decision.

How do they demonstrate a wish? They turn up on their own to the doctor, seeking some kind of care or counselling, whatever. They might do it with a parent present by indicating that they do not wish the treatment that the parent has brought them in for.

At the present time it could be rebutted down to the age of one day and that has raised some technical concerns, although I do not think they are practical ones. The committee may decide it wants to make it clear in law that there should be a bottom age on that rebuttable presumption.

**Mr Poirier:** Yes. We know who the rebuttee is, but who will be rebutter?

**Mr Sharpe:** The health care provider would—

**Mr Poirier:** Only that person?

**Mr Sharpe:** That is the intention, and perhaps that should be made clear when we get into the legislation. But you mentioned the common law; there really is not this notion of rebuttal presumption at common law. Right now it is very much a matter of the development and maturity of the young person.

I have always been of the view that unless a statute takes away the right from the young person to make the decision for himself or herself, someone may at 14 or 15 be quite competent to make judgements for himself or herself and that health care providers today should be respecting the rights of those persons.

**Mr Poirier:** What happens when young people come on their own to see a doctor for a sexually transmitted

disease, for example? They may be 13, 14 or 15. What happens there?

**Mr Sharpe:** I would suggest that today they probably receive treatment and if they wish that their parents not be told, it would be my view that probably providers would respect that, because at common law they would be able to determine that the young person was mature enough to make his or her own judgements. There is no presumption to rebut. Some public health people who will come before this committee later on have certainly told us they intend to do that. They will say that this language may make it a bit more difficult for them to deal with young people.

However, today I would expect those young people would come forward on their own, which in itself shows a certain sense of maturity, that they would come to get the care they need. If they have asked the provider not to tell their parents, again, I think you should question providers who come before the committee, but I would think that most would respect those wishes.

**Mr Poirier:** Do they still today feel protected or do you think they would feel protected by what is brought forward? It may or may not be rebutted by the care giver, but if the parents would find out through some other means that their 13- or 14-year-old child had received some health treatment or care from a provider—have there not been cases so far where parents have questioned that?

**Mr Sharpe:** Not to my knowledge, not civil liability cases. There may have been complaints to the College of Physicians and Surgeons based on professional misconduct, although, again, I am not aware of those either. But we have provided here in subsection 24(1) an immunity against civil suits for practitioners who behave reasonably in following the tenets of the legislation. There has been some suggestion in our recent meetings that it would be helpful if a specific immunity were given to those who rebut these presumptions in good faith and on reasonable grounds, so that they can be assured of not being sued. Again, that is something the committee may want to consider when we get to that stage.

**Mr Poirier:** I think that aspect can be very well tightened up, because with what is happening with civil suits and whatever today, when you look at what is happening with the health situation of a lot of the young people, drugs, sexually transmitted diseases, whatever, under 16, I think we will really have to protect those care providers that want to provide care for those under-16 young people.

As far as we know, there is a heck of a lot of them that do not have care, because they may not know they have a problem, but we want to make sure that the law will protect the health care provider so that he or she does not have to worry. If they tend to specialize and they get to be known to be very open to the younger people, and younger people will pass on the message that this person is very open to young people and he ends up having a lot of interest from young people, we have got to make sure we protect that person.

**Hon Ms Lankin:** If I can just add to that, I think that raises the question of whether or not there should be a reference point age, and if there is a reference point age,



whether 16 is the appropriate level. I think there are two levels to that question that we will hear considerable debate on as we go through this, but I think we share that concern, to ensure that a young person who is capable of making a health care decision is provided that opportunity, and that we do not have a closing down of those services because of a chill effect of the legislation, that providers are concerned that they would be at risk in making those decisions.

1710

**Mr Poirier:** I do not know, I have not discussed this with anybody, but from my personal experience I find 16 rather high. But we will definitely get a chance to talk about that. I am afraid at 16 we are going to bounce out a whole lot of young people today that you and I know are sometimes way below 16, who need sometimes, or who do not get, the support of the family to go and get health care.

**Hon Ms Lankin:** Certainly, the way the legislation is written, if an individual below the age of 16 says he wants to make this decision for himself and is capable of making this decision, the health care practitioner then will have to make a determination, as in any other case, whether that person is deemed to be capable of making the decision or not. The process is there, but I think the question you raise is how will health care practitioners behave with that? Will they feel at risk and will that have a chilling effect? I think those are some of the things we need to hear through the consultation or the committee hearings.

**Mr Poirier:** I am sorry if I took a bit of time on that particular point.

**Hon Ms Lankin:** It is an important one.

**Mr Winner:** Just briefly to build on what Mr Poirier asked you, and you may have answered this for me before—I forget which expert is which—the 14-year-old young lady comes in and asks for an abortion. Under this particular section we have been referring to, could a doctor presume that the 14-year-old does have capacity to consent, notwithstanding the 16-year cutoff age? Or would the doctor have to proceed the way other doctors have and involve children's aid and get the consent to the abortion that way, without the child's parent consenting?

**Mr Sharpe:** The way this is drafted, the physician would assess the competency of the 14-year-old to consent to an abortion, and if that physician believes the young person is competent then the presumption against capacity will be rebutted. They would be advised by their insurers and so on probably to well document that rebutting of the presumption and they would then be able to deal with the 14-year-old as a patient, one on one, autonomously, and provide the abortion with her consent alone. That is the way this would operate.

**Mr Winner:** And be covered under section 24.

**Mr Sharpe:** Section 24 would provide the immunity so as long as they behave reasonably.

**Mrs Sullivan:** I am interested in this section, although I think in the entire scope of things it is a relatively small point we will be able to get to more clearly on clause-by-clause. It seems to me that one of the problematic areas here is the specific age. The concept of a mature minor

being included may be a more ethical approach if you are looking at questions of whether the treatment is understood, the risks and the alternatives, and the questions are understood.

I think the drafting here does not give adequate reference to situations, for example, where there is an indication of the physician's diagnosis or judgement that the young person is not capable of making a decision and therefore turns to the parent as a substitute decision-maker.

We live in a very different time from some of the concepts relating to parent decision-making years ago, when most parents lived together, when there was agreement between them on courses of action and so on. We are now into a situation where we have a different social fabric, where disagreement between parents can have an impact on the physician who wants to provide the treatment or who is recommending the course of treatment, when it is a refusal of treatment by a parent. It just seems to me that redrafting with some other emphasis here is going to be necessary.

I am also very concerned at these ages being included if you are dealing with children who are mentally unable to make decisions, and that judgement has been made regardless of age factors and where there is a different kind of dependency relationship than can be categorized in the normal terms by age. So we would certainly be looking for some consideration there.

As I indicated before, one of the things I am concerned about with this bill is that the advocate, because of the process that is outlined in this bill, comes in before the parent, so there is also a delay there that I just do not think is acceptable in terms of the normal delivery of care, whether it is immunization or a cut finger.

**Mr Sharpe:** As I indicated earlier, I guess it comes down to the importance that we as a society place on the rights of young people. If we decide that it is very important, particularly with adolescents, to respect their autonomy, and they have indicated clearly they want to make their own choice in an important health care decision situation, but the physician, perhaps under some pressure from the family and parents who he or she has dealt with for years, decides that the young person is not so capable and therefore does not pay attention to their concerns, how do we ensure that the young person's rights are protected?

The way this act suggests is that there be a delay while the advocate visits the young person and explains to them that they have the right to challenge the decision that they are not capable to a tribunal. Is a visit by an advocate necessary? Could it be done by simply having the provider obliged to tell the young person they have a right to challenge that finding, to give them a form or to give them an explanation? Do we trust providers, frankly, to do that under coercion from parents who are standing there?

This act says we are better advised to have someone from the outside come in and speak to the young person separate from that treatment situation. And, yes, that would delay treatment. Is it worth it to respect the rights and the interests of the young person in making their own choice about their own care? I guess those are the debates we have gone through in our consultations. The committee

will hear a number of sides too, I would expect, during the hearings process.

**@N = Mr Poirier:** Further to that point, you have just said that the parent decides to tell the care provider that the child is not competent to make the decision.

**Mrs Sullivan:** The practitioner.

**Mr Poirier:** Yes. I see another point where the parents will tell the care giver that they do not want that child to have the right, even though they may recognize the child is competent. What happens then?

**Mr Sharpe:** Again, under this act the care providers hopefully will make an independent decision, because it is still their obligation to make sure they have a valid and informed consent from their patient, and in this case their patient is the young person. The young person has demonstrated an intention to make a decision. The providers, the doctors, say, should then assess the capacity of the young person in that situation to make that choice. If the decision is that the young person is not capable, a decision the parents would be very happy to hear presumably, then the way the act is now prepared the young person has a right to have an advocate visit him and explain that he can challenge that decision before the tribunal.

**Mr Poirier:** The care giver's decision?

**Mr Sharpe:** The care giver's decision that they are not capable. The parents, although they perhaps can exercise a bit of coercion, should have no role in affecting the judgement made by the physician, that should be independent. But where that judgement is that the young person is not capable, and it may be that a long-standing relationship with a family practitioner and the parents might have had some influence in their coming to that choice, the young person will have an independent individual come in and explain that if he would like to challenge the physician's decision that he cannot make his own choice, he has a right to do that. Then the advocate will help them do that, perhaps get counsel or whatever is necessary. In the interim, there will be no treatment.

**Mr Poirier:** In the interim, what happens if it is a bit of an emergency situation?

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**Mr Sharpe:** We are coming to that. Actually, that is different.

**Mr Poirier:** How about the decision where the young person may or may not, versus can or cannot, make the decision. I know English is my second language, but I was tapped on the fingers about the difference between "may not" and "cannot." Maybe they can make an informed decision, but the parents say, "You may not make that decision."

**Mr Sharpe:** In that case, as far as the provider is concerned, the presumption that they are not capable would probably retain the right on the parent to make the choice. If the young person is so coerced by the parent into not demonstrating a desire to make a choice, even though factually they may have that ability, the physician is under no obligation to rebut the presumption, have an advocate come in, that sort of thing. That has created concern

among some providers who have indicated that they would prefer to stay with the common law, where they do not have a presumption against competency to worry about. They can simply deal with the young person and decide, are they or are they not competent, and if they are not, they look to the parent.

**Mr Poirier:** So in fairly non-medical terms, some parents are bound to go snake pertaining to a care giver's decision?

**Mr Sharpe:** That is a concern. Could this somehow effect an interference in family relationships? The fact is that today, as I indicated, at common law for all settings outside of hospitals, this is currently the situation. The young person has the right to make his own choice if he is factually competent. There is no presumption against that.

**Mr Poirier:** Including age.

**Mr Sharpe:** There is no age at common law.

**Mr Fletcher:** Mr Chair, a point of clarification. Are we asking questions at each step along the briefing, or are we waiting until the briefing is over? My question may be answered if the briefing continues.

**The Chair:** That is what I was going to suggest. If we speed things along because the hour is getting late, a lot of things might become clearer as we proceed.

**Mr Fletcher:** Then I will pass, Mr Chair.

**The Chair:** Mr Sharpe, if you would like to continue.

**Mr Sharpe:** Section 10 is another of the important sections. This deals with a person 16 or older who is judged to be incapable with respect to treatment. The health practitioner must do a number of things: advise the person of the finding and give him written notice that he is entitled to meet with an advocate and apply to the board to have that decision reviewed, and notify an advocate. Subsection 10(2) requires that the advocate promptly meet with the patient and explain the effect of the finding of incapacity, which is essentially that someone else will now make the decision for him, and that he has a right to challenge the finding that he is not capable before the review board.

The reason, of course, the advocate steps in ahead of the substitute is that the substitute really does not have a role until the capacity decision is finally determined. As the minister indicated, and based on our experience with a similar provision in the Mental Health Act, the person who is told that he has been found to be incapable and has a right to challenge that finding, in most instances that challenge does not take place. They are satisfied or they do not understand or whatever, but the substitute then moves in and makes the decision on the treatment for them.

This section is really a very important one, because in most instances, when we think of having powers removed from us as adults, it is usually done through a court process. In the so-called sanity trials under the old Mental Incompetency Act, there is a very high onus of proof beyond a reasonable doubt before someone can be found to be incapable and then have rights removed from him to make decisions about, say, his finances. There are some who have expressed grave concerns that in health care there should be an exception made where simply the judgement



of, say, a physician can remove our rights to make very important decisions, perhaps more important than money, decisions about what happens to our bodies. For that reason, this compromise was struck during discussions at the Fram committee several years ago—you will hear more about that on Monday—the notion that we certainly cannot put all health care decisions on competency through the courts, for obvious reasons, but can we ensure there are protections so that the person found to be incapable, who does not believe he is incapable and wants to make his own choices, knows there is a process whereby he can challenge the finding of incapacity? That is what this advocate's visit is intended to achieve.

It is not mandatory that there be a court hearing or a tribunal hearing before someone loses the right to make those autonomous choices in health care, but we want to make sure the person knows he has that option, should he want to exercise it, and that is what this provision is about.

We have taken three steps. We have said that when, say, the doctor finds the person to be incapable, you should tell him about the finding, give him written notice that he has a right to challenge that before the tribunal and have an advocate come in and review the process with him in addition to those other safeguards. That is essentially what this section is all about.

**Mr Fletcher:** Just a note as far as Alzheimer's patients are concerned: My father, before he died, suffered from Alzheimer's, and my sister had to go through a legal battle just to get treatment for him. Is this going to alleviate that at all, as far as Alzheimer's is concerned? Sometimes you do not know night from day, or you can have explained to you that yes, you have the right to an advocate, and then the next minute not even know what a person is talking about. In the case of that disease, is this legislation, or even this part of it, going to help people who wish to take care of their family member who has Alzheimer's?

**Mr Sharpe:** To be honest, the focus here is more on the rights of the person who has been found to be incompetent. I have an uncle with Alzheimer's who has been in Baycrest for a time; when I visit him, sometimes he knows me and sometimes he does not. When he has somewhat lucid moments, he is still not competent to make care decisions, but being a former lawyer—he is still a lawyer, I suppose—he would certainly be aware of the situation where his wife is now making care decisions for him. The fact that an advocate visits him to tell him that he could challenge that decision before a tribunal I do not think in his case would make any difference. I think he would still trust his wife to make those decisions. He has not demonstrated a real desire to take over that role during the last time he has been in.

The problem with someone who is truly incompetent understanding what the advocate says to him is of course a very great difficulty. Here we felt we should err on the side of caution in at least giving an explanation to him—the concept in the legislation about gearing it to the particular disability of the individual where possible so that you do your best as an advocate to explain to him. It is almost like taking instructions from a mentally ill client who will

perhaps be judged not fit to stand trial but ultimately could know enough about the court process to at least be able to tell you he wants to challenge the attempts of the crown to do that. The test is very low for instructing counsel, and I would hope that here we would have a similar ultimate determination that enough could pass through so the individual understands he can challenge it.

In this situation, if your relative's decision were, when he was somewhat lucid, "I want to make my own choices and I want to challenge it," then counsel could be obtained and he could attempt to bring that before the tribunal. The evidence might be overwhelming that they are not capable, but at least they would feel they have that option of going forward and still attempting to make their own choices.

As I say, in the case of my uncle it would not have made much difference, because in that family relationship he really trusted his wife to make those choices for him.

**Mr Fletcher:** This would also come into effect if the person with Alzheimer's were to say yes one day and no the next, what Mr Morrow was talking about before.

**Mr Sharpe:** Yes, that is right.

1730

**Hon Ms Lankin:** I am going to build on that and ask Gilbert to address the issue—it comes up later in the legislation—around advance directives and making known what your wishes are in advance for treatment and/or who could be the substitute decision-maker in certain situations, those kinds of things in the situation you are dealing with, which is very different from the situation we perhaps will hear with respect to Ontario Friends of Schizophrenics and the problems they face as family members. You may want to hold it until you get to that point, but there is a connection.

**Mr Sharpe:** That is fine. In the interest of time, so we can complete the briefing, perhaps I could go to section 13 and talk about the wishes-versus-best-interests idea and the advance directive and its role.

The thrust of the legislation, as we have been discussing so far, is to respect a person's autonomy wherever that is possible, so that the concept in both Bill 108 and this are that a person should be able to, when competent, make out a power of attorney for personal care, in the case of personal care decisions, indicating in advance what he does or does not want and who he wants to make choices and so on should he not be competent in the future. It may be that someone diagnosed early on with Alzheimer's would make out such a thing.

I can remember some years ago being involved in amendments to the Powers of Attorney Act, which dealt just with estates, dealing with the Alzheimer's society to make certain that where one of their members wanted his spouse to continue to look after his assets, when he is admitted to a psychiatric facility the public trustee not automatically take over, which had been the law for many years. The acts were amended to make sure that would happen.

This is a similar kind of extension into the personal care area. In section 13 we deal first with the power of attorney for personal care, which we will hear about on Monday. It is a very formalized process. The idea in subsections (2),



(3) and (4) is that wishes will always override the best interest notion if they are known.

In subsection (2) wishes with respect to treatment override earlier instructions, so even though a person has made out a formal document, if he subsequently says he has changed his mind that is good enough; he does not have to go through a formal process of changing his mind. In subsection (3), again we get into later and earlier wishes.

Subsection (4) is a kind of advance directive concept. Wishes with respect to treatment may be written in the prescribed form. We are not requiring that the form we develop be used necessarily; we are simply thinking of putting together something as a guide. But we have met with a number of groups such as Dying with Dignity that have suggested forms to their members. We would not preclude their forms from being used or from any type of form being developed, but the idea here is that someone, when competent, can indicate in writing, if he wishes, what he would or would not want done later on.

The "later on" might not necessarily be a living will situation, a terminal situation; rather, it might be someone who does not want to go into a particular type of facility if he is not able to make judgements for himself, if he does not like a particular kind of nursing home, say. Or a chronic schizophrenic also has taken a certain kind of medication that has given him terrible side-effects, like tardive dyskinesia, may choose to indicate when competent that he does not want that, or he may when competent be very grateful that intervention was given when he was incompetent and indicate in his advance directive that he would want to be brought into hospital and cared for; that when he becomes incompetent, whatever he says he wants people to disregard. We are trying to make the scope of the advance directive notion very broad in the legislation.

There is one exception and perhaps we should speak about it very briefly here. It is in section 29, on page 16 of the bill. We have set up a structure to permit departure from instructions or wishes, even though clearly known. This is in subsection (3), in the case where it is an application to a tribunal, where the board is satisfied that the incapable person would probably, if capable, have given consent because the likely result of the treatment is significantly better than what was available at the time he made out the living will.

What this is intended to apply to would be, to take your example, someone who has Alzheimer's and has made out a living will indicating that he does not want any heroic or special measures used or any treatments given once he reaches a certain state. He reaches that state. The will is clear; his wishes are clear: He does not want care or treatment. A new drug is developed in the meantime that has proven to be very effective. Should we deny giving that drug to him because he has made out a prior statement without the knowledge that the drug was available? This would provide an opportunity to the provider of care, to the family, to apply to a tribunal, and the test is very tight. It is that the person would probably have given consent because the likely results of the treatment are significantly better.

Norm Sterling, you may recall, raised during second reading the concept of the breadth of the override provision

to take into account, again, a very controversial area. A woman who may have made out a living will subsequently gets married and gets pregnant. She is six months' pregnant and is in a car accident and is brain-dead. The living will said, "No heroic measures; disconnect all life support." The family indicates that she really wanted to have this child and it is possible to keep her on life support long enough to do a caesarean section a couple of months later and it is something she would desperately have wanted.

Should there be a means of taking those new and different circumstances into account in this legislation? That is a very difficult issue. The policy that was developed here does not reflect the concept of broadening it to significantly different circumstances, because groups like Dying with Dignity have suggested it does create a possibility of family overriding clearly expressed wishes in advance by people and undermining the effect of a living will. The argument is that it is like any of us who makes out a will. We should be responsible enough to know we have made out this document and to review it regularly and alter it if our circumstances have changed. It is argued that we should not weaken the effect of a living will by broadening the effects of subsection 29(3). But I believe that, based on our consultations of the last few weeks, there may be groups coming forward speaking to both sides of that issue in the new year.

**The Chair:** Thank you, Mr Sharpe. We have several questions lined up now.

**Mrs Sullivan:** One of the things that is giving us all pause and concern as we go through this is that we are thinking about different applications of the bill in terms of different illnesses or periods of competence and so on, which may change from issue to issue and time to time; that because of the impact of the particular illness, a person may appear to be competent at a point in time, that the illness itself may allow that appearance although the appearance is not what a physician or a care giver in another situation may have determined to be competent. I am thinking of situations like schizophrenia, situations like the patient with a severe stroke, who is in a highly depressed state, where no competent wishes would have been expressed, although there may be a level of understanding about a certain level of treatment given.

I suppose as we go through this and look at the person's wishes coming first, what we see in many cases are wishes for or a course of medical treatment at a particular time, where in another situation the person would have said, "Yes, this is in my best interest," but in that particular situation, even while being judged competent, he would say no.

I think that is where the controversy comes in, the balance between the whole range of disabilities that would lead to an incapacity or a conclusion on the part of the health practitioner, when in other circumstances there would be very different judgements.

**Mr Sharpe:** It is a very difficult situation, because we felt it is important to try to place the maximum emphasis on individual autonomy, and you do this by trying to respect wishes as much as you can. This has been reflected in American cases like Quinlan and Saikowitz and so on. But



how do we know whether the person was actually competent when he or she expressed those wishes some time ago? Say with a patient suffering from a psychiatric condition, he might have been in the throes of psychosis when he made a statement; there was not an assessment at the time, but those are the expressed wishes that are available.

1740

**Mrs Sullivan:** If you have a situation where a patient has been found guilty by way of insanity in a court and is placed in a correctional institution and a course of treatment prescribed, because that person is in an institution already, he is there under another section of the law, how does that situation fit into consent and into the substitute or advocacy situation? Does the advocate appear? Does the consent occur in any case?

**Mr Sharpe:** No matter what the setting in the province, whether it be a jail where the person is receiving care by a physician, say, or a person committed as an involuntary patient to a psychiatric facility, a person found not guilty by reason of insanity and put on a Lieutenant Governor's warrant in a facility, the rules would be the same for all of them, that if they are found to be incapable, there would be appeal mechanisms available. The Mental Health Act currently has a mechanism that does that, and ultimately the substitute would make decisions for them.

So, yes, this would apply uniformly across all of those populations because a finding of, say, not guilty by reason of insanity, or that the patient is dangerous on account of a mental disorder and is committed to a mental hospital, does not necessarily mean he is incapable of making treatment decisions. That is a separate determination of the same prisoner.

**Mrs Sullivan:** I think of the person who is being transferred, then, to Penetanguishene, which is basically a hospital setting. If the patient is not incapable, why would the patient be in that setting?

**Mr Sharpe:** Because they have been found not guilty by reason of insanity of a very serious crime and they are very dangerous. But they are not guilty, so they are not going to be in prison; they are put in a maximum security psychiatric setting to protect society and provide a milieu where they can receive treatment.

**Hon Ms Lankin:** Perhaps again to relate it to what occurs in our psychiatric institutions today under the Mental Health Act and the rules that are there now, maybe you could make some connections. Because this is not abstract; we deal with these situations today.

**Mr Sharpe:** Today a patient who is brought in on a Lieutenant Governor's warrant to Penetanguishene, having been found not guilty by reason of insanity, is dealt with in the context of the legislation and the Mental Health Act. If they choose not to have treatment and they are competent—they may be treatment competent—then no treatment is given. If they are incompetent, then a substitute is provided, and there is a rights advocate who provides advice to them so that they can challenge the finding of incompetency before a tribunal and ultimately to the courts. After that route is exhausted or if they choose not to exercise it, the substitute comes in and makes a choice for them, just

as with any other patient. That has been operating under the Mental Health Act for some years.

**Hon Ms Lankin:** That is the situation we already experience.

**Mrs Sullivan:** Let me then move back to this bill. As we move through this bill we see that only the guardian, in terms of substitute decision-making, can ultimately make the decision that a person will go to a hospital or a psychiatric institution.

**Mr Sharpe:** You are talking about the admission dimension, that normally a substitute consent to treatment would permit the admission to the facility in order to get them the treatment unless they are objecting. If they are objecting, then you have to have a guardian, and if the admission is to a psychiatric facility, the guardianship order must specifically state that there is authority for them to be admitted to a psychiatric facility. This today is a very difficult area. In my view there is no authority short of clear guardianship or committeehip of the person under the Mental Incompetency Act or committal under either the Criminal Code or the Mental Health Act. There is no way a substitute decision-maker can sign someone into hospital. They do not have control of the body.

The Public Hospitals Act, for example, simply says that the next of kin can sign a consent to surgery. That does not mean they can sign them into hospital. It is a very difficult area we are attempting to address here by suggesting that the substitute can also authorize the admission to a facility where it is necessary to get them the treatment, unless the person is objecting, and then we have some protections built in.

**Hon Ms Lankin:** This is the very issue that organizations and families, like Ontario Friends of Schizophrenics, will want to see dealt with in the legislation, because this is the problem they experience in dealing with members of their families in trying to get treatment at a time when they feel that person needs it. Some of the combinations of things, like the advance directives and other sorts of provisions of the legislation, may assist. But we will hear very clearly, I think, that that organization will feel the legislation needs to be clearer and to provide more rights to families in those situations.

**Mr Carr:** In the minister's statement you were saying you do not envision too many going before the board. I think you talked about some of the circumstances now. In numbers, what do you anticipate in terms of different cases going before the board? Have you any idea what you will be looking at?

**Ms Auski:** The experience with the Mental Health Act indicates that the numbers would not be high. I think the minister quoted in her statement that in 1990 there were some 54,000 admissions to psychiatric facilities and there were only 78 hearings on the mental capacity issue before the review board.

In fact there would undoubtedly be fewer than that if this package of three pieces of legislation goes forward, because many of those would likely be dealt with for ongoing mental incapacity under the Substitute Decisions Act. You would not have to go back repeatedly. Say with a

psychogeriatric patient who was going to be a very long-term patient, you would not have to use the provisions of the Consent to Treatment Act, which is really geared more for people with temporary or fluctuating incapacity.

**Mr Carr:** I know the minister touched on it and said a little bit in the statement, but in terms of the time frame you are looking at—

**Ms Auski:** Those that go to hearings?

**Mr Carr:** Yes.

**Ms Auski:** The rules here, and as well in the current Mental Health Act, put fairly stringent time frames on when the board must hear the case. I believe it is within seven days that it must convene a hearing, within, I believe, one day it must render its decision and within two days it must have written reasons. So there should be no delay from that part.

There are far fewer cases that then go further to appeal to court. If that happens, and we do not have the control over the court process, there is an interim treatment provision that could take care of serious problems that might occur.

**Mr Carr:** Is there any interim period before they appear before the board too? My concern is about some of the delays that take place. We say we would like it one to seven and then we anticipate 74 cases, or whatever. This is not unlike what happens to a lot of boards and commissions that get set up, whether it be WCB or the hearings, and we say we are going to do it within a certain time frame, gear up and then for whatever reason we have more. Then, for example, they might not be able to convene and have a hearing in that period of time. There are provisions in here then for something like that, similar to what would happen if they went the other route through to the courts?

**Ms Auski:** Actually, I should really clarify too. I did not finish my statement about the number of hearings. Clearly that is how many are now under the Mental Health Act. There would undoubtedly be some number more extending it to other areas.

**Mr Carr:** Sure, I understood that.

**Ms Auski:** What may be worth while here is, I think, the next part that Gilbert would be talking about, the emergency provisions which deal with people who are mentally incapable. If the need for treatment is sufficiently urgent, the criteria are there. If the person is incapable and you need a decision and you cannot get consent in a prompt way, when is treatment permitted without consent?

**Hon Ms Lankin:** I think that is one of the last sections of the act that we want to deal with. If we could perhaps touch on that and have some final comments, we might be able to conclude and answer more questions.

**The Chair:** If we could have one brief question from Mr Malkowski first. He has been waiting a while.

**Mr Malkowski:** This is very brief. You do not really need to respond. It is just to get your comments on it.

On section 13, under the will to express, let's say through written, oral or any other mode of communication, let's say through blinking of eyes for some people or body language for people who are immobilized, I think we need to include that. For example, a person who is deaf and

blind, they may have to use someone who is called an intervenor or someone who uses sign language so that the care provider can make sure they can identify the communication needs of what the person is expressing.

**Mr Sharpe:** Yes, that is very important. The act should clarify that the consent can be given through any means of communication. I am sure we can do that during clause-by-clause.

**Hon Ms Lankin:** Perhaps, Gilbert, you could wrap up with the explanation of emergency.

**The Chair:** Sure, that would be fine.

**Mr Sharpe:** Section 22 is the emergency provision. This is a provision permitting that health care providers need not follow what has gone before the process for obtaining consent, where the person is incapable, or is likely to suffer serious bodily harm within 12 hours if the treatment is not administered promptly, and it is not reasonably possible to obtain a consent or refusal on the person's behalf, in other words to find a substitute, because delay could result in serious bodily harm.

The primary concern expressed by the medical profession is the 12 hours, as the minister mentioned. If someone has gangrene, you do not necessarily know if he or she is going to lose the limb in 12 or 16 hours. It may be that there is sufficient protection with the concept of "serious bodily harm" and "promptly," because we are dealing with a situation of dispensing with the consent at all and allowing the person to receive the care that is indicated.

Section 24 deals with the protection from liability and there are a number of provisions. I will not take time to run through them now.

Section 28 focuses on applications to the tribunal where certain instructions or wishes are not clear, and there is a process set out for doing that.

The other provisions are, I hope, fairly straightforward and will be discussed, I am sure, in some detail as we get into committee.

I should point out that there have been some questions raised about the new panel or tribunal that is being established. It is going to replace the current panel under the Mental Health Act, although for the purpose of committal hearings under that act it will retain the lawyer, the psychiatrist and the layperson. But for all other purposes in section 35, we are looking at not necessarily requiring those people, though at least having someone who has expertise in determining capacity, where that issue is before the board. This should open up the membership on the board to a host of other individuals who do have expertise.

**Mrs Sullivan:** You talked about transfer of the one office. Will the psychiatric patients' office also be transferred to the advocacy commission?

**Mr Sharpe:** I believe that is the intention.

**Ms Auski:** I believe yesterday the Minister of Citizenship did mention that, yes. That would be in relation to the Advocacy Act.

**Mr Sharpe:** Finally, section 41 establishes the ability to appeal from the tribunal's decision to a court on a question of law or fact, or both. The regulation-making powers,



as I indicated in section 45, allow us to prescribe forms and in particular to prescribe criteria, standards and procedures to be followed by health practitioners in determining capacity.

**The Chair:** As the minister has indicated, she or her parliamentary assistant will be available during the hearings for any questions that come up further to this.

On behalf of the committee, I would like to thank the minister, Mr Sharpe and Ms Auski for appearing before us. Thank you for taking the time. Seeing no further business today, we will adjourn until Monday, December 16, at 3:30.

The committee adjourned at 1754.

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 16 December 1991

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 16 décembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent

Chair: Mike Cooper  
Clerk: Lisa Freedman

Président : Mike Cooper  
Greffière : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 16 December 1991

The committee met at 1532 in room 151.

### ADVOCACY ACT, 1991, AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

**The Chair:** I call this meeting of the standing committee on administration of justice to order. Could we have a motion to put Mr Chiarelli on the subcommittee?

**Mrs Sullivan:** I would like to move that Mr Chiarelli become the official opposition representative on the subcommittee of the justice committee.

**The Chair:** Thank you, Mrs Sullivan. All those in favour of putting Mr Chiarelli on the subcommittee? Opposed? Carried.

As the Chair, I would like to welcome Mr Chiarelli to the subcommittee.

Today we will be discussing Bill 108 and Bill 110. I would like to welcome the Attorney General, the Honourable Howard Hampton, to the committee. I guess we will start off with your presentation and then we will discuss whether they want questions right away or you want to have your staff go right through clause-by-clause. You may proceed.

**Hon Mr Hampton:** Thank you very much, Mr Chair and members of the committee. You will remember I was here once before on these general issues. I am pleased to be here again.

As you know, there are three linked bills on which you will be hearing public comment, Bill 74, which is the Advocacy Act, Bill 108, the Substitute Decisions Act, and Bill 109, the Consent to Treatment Act. I appreciate, and I

think you appreciate, the difficulty and the complexity of your important task. These bills address fundamental concerns all three parties have had about the welfare of the most vulnerable people in our society.

Bill 108, the Substitute Decisions Act, for which I am responsible, is a response to issues and problems that have existed for many years and is based on the consensus report of the very broadly based Advisory Committee on Substitute Decision Making for Mentally Incapable Persons, established by the last Conservative government. You can see that we have been working at this process for some time. The implementation of the advisory committee's findings was advanced by the former government, and I now have the honour of refining and introducing the bill.

The bill attempts to answer some very difficult questions you will have to keep in mind as you start to deal with the legislation, questions like, how can we give adults the greatest possible freedom to arrange their property management and personal decision-making prospectively, so that if they become incapable in the future, there will be others they trust to make decisions for them in the way they would have done? How can we be assured that those who are not capable of making choices about their property or personal care have someone who is accountable for the decisions that are made? How can we have safeguards to protect people's fundamental rights without unnecessary and costly procedures?

How can an individual's network of family and friends be encouraged to continue to provide assistance to him or her when he or she becomes mentally incapable of choice? How can this be achieved while protecting people from the financial exploitation, abuse and neglect that is sometimes involved with members of one's own family? How can we stop the financial exploitation and the physical abuse and neglect of people who are not capable of choosing to get themselves out of abusive situations? How can we do so without state intervention in the lives of people who are capable of making their own choices?

Let me briefly review how the Substitute Decisions Act responds to these questions. First, there are some important changes in the law governing property.

There are new safeguards on the making of continuing powers of attorney for property. Now, two witnesses unrelated to the grantor of a power or the attorney and a declaration by the witnesses that they have no reason to believe the grantor is incapable will be required. These provisions are designed to reduce financial exploitation that now takes place using powers of attorney. It is our hope that continuing powers of attorney for property can be an even better means of carrying out their maker's intentions.

There are new procedures for statutory, that is, non-court, guardianship of property of people who are professionally assessed as incapable of managing and who do not object

to the public guardian and trustee managing their property for them. There is a right of able and willing spouses, partners and relatives to take over the management of the property from the public guardian and trustee. This is an important role for responsible family members and addresses a major concern about the existing property management provisions of the Mental Health Act.

The unnecessary complexity of the powers of guardians over property has been eliminated.

Finally, greater investigation and oversight authority is given to the public guardian and trustee over guardians and attorneys.

Second, the Substitute Decisions Act addresses personal care decisions. These parts of the bills have attracted the most interest. In part, this is because we as a society have paid so little attention to ensuring that those who have not been capable of making their own decisions have had accountable decision-makers.

The most innovative means of addressing people's needs for substitute decisions is by allowing them to make their own choice through a power of attorney for personal care. In it they may choose their attorneys and make their wishes known about future treatment and care. Those wishes may take the form of an advance medical directive specifying treatment to which they consent and treatment they refuse. People may use their powers of attorney to direct that their care be in accordance with their culture and their religion.

But it is important that powers of attorney for personal care not be a means whereby the grantor loses his or her autonomy and the right to make decisions while capable of doing so. That is why the bill provides that before a power of attorney can take effect as ongoing authority of the attorney to make personal decisions for the grantor, there must be filed with the public guardian and trustee professional assessments finding that the grantor is incapable and a statement from an advocate that the grantor has been visited and does not object to the power coming into force.

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Where someone does not or cannot make a power of attorney for personal care and is or becomes incapable, the bill provides for the appointment of a guardian of the person by the court to make decisions the individual is incapable of making. There are thousands of people in Ontario in institutions who are having decisions made for them. These decisions are being made without authority. Are they made for purposes of expediency? Are they principled decisions? We have no idea. We can no longer be passive and expect care givers to carry our burden.

Our freedom to make our own decisions while we can is precious. The definition of incapacity is very important because it limits state interference in people's lives. We must be satisfied that we are not interfering with the right of people who know what they are doing to make decisions different from most of the community. Under the bill:

"A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate

the reasonably foreseeable consequences of a decision or lack of decision."

We must limit our interventions to those that are necessary. The bill provides for the appointment of a guardian to make only those decisions about health care, nutrition, shelter, clothing, hygiene or safety that the individual is incapable of making. It provides for the court to give the guardian those powers that are necessary to carry out the decisions. A full guardianship may only be granted when an individual is incapable of making any of the major types of personal care decisions.

Those seeking to be guardians of the person or property must be suitable as outlined in the act. Partners and relatives who have ongoing contact with the person needing a guardian are preferred under the act. Once again, it is family who are preferred.

Procedures under the act for guardianship are designed to reduce costs and expedite matters where there is no doubt about the need of a person for a guardian or of the fact of incapacity and where no one objects to the guardianship.

It is not sufficient that there be someone to make substitute decisions. Those decisions must be principled. The bill imposes duties on guardians to guide them in the exercise of their powers. These duties reflect the best words can say about the relationship of guardian and the person to whom he or she is responsible. The principle that is paramount is that decisions should reflect the known competent wishes of the person for whom they are made. The paramountcy of this principle is a key feature of all three bills.

One of the saddest situations we repeatedly face today are people who are mentally incapable and at serious risk of harm. They are financially exploited or are physically neglected or abused. We can attempt to deal with these situations from the adult abuse perspective and end up running roughshod over people's rights and causing great harm to the individual we want to help. Under the substitute decisions legislation, we respect the rights of mentally capable adults to make their own choices. However, for the first time we are providing for a means of acting that generally is agreed to be the most sensitive.

If a person is thought to be incapable and at risk of exploitation, neglect or abuse, the public guardian and trustee must investigate and apply for guardianship. The court can order assessments of capacity in the person's home and under the least intrusive circumstances. The court can make the public guardian and trustee temporary guardian with appropriate authority and the most suitable, least intrusive decisions can be made.

The public guardian and trustee is vital to the operation of all three pieces of legislation. The public guardian and trustee is substitute decider of last resort as guardian of property, guardian for personal care and consent to treatment. The public guardian and trustee is necessary in order to protect the integrity of advocates acting under the Advocacy Act. Advocates are not decision-makers for vulnerable people. Advocates are not given and should not have power over vulnerable people. When an advocate finds that a vulnerable person is mentally incapable and is being exploited, neglected or abused, there must be someone to whom the advocate can turn to take action.



The public guardian and trustee is watchdog for financial exploitation, physical abuse and neglect of mentally incapable people. It must investigate allegations. It must force attorneys and guardians who are acting improperly to account. It also validates powers of attorney for personal care that operate like guardianship. The public guardian and trustee informs, educates, advises and assists the public.

Bill 110, for which I am also responsible, makes the changes to statutes that are needed as a consequence of the changes in the three major statutes. For example, it amends the Mental Health Act to repeal the provisions now in that act to govern consent to treatment, because the Consent to Treatment Act will apply to all treatment decisions.

During these public hearings you will be receiving submissions for amendments to the bills from individuals and organizations. Some of the requested amendments will create difficult choices for the committee. For example, the Ontario Friends of Schizophrenics will point out that some people have mental disorders that cause them to have periods during which they are mentally capable and other periods in which they are incapable. Some of the people with this disorder are aware when they are capable that during these periods of incapacity they will refuse all treatment and help. They want to take steps while they are capable to ensure they get the treatment or care they want when they are incapable. The Ontario Friends of Schizophrenics will draw our attention to the fact that there is nothing in the legislation that meets their needs. If an amendment of the kind they suggest is made, we must ensure that it cannot become a tool to coerce people with mental disorders into forced treatment.

The Ontario Association for Community Living will be addressing the committee. The OACL represents about one third of the families of people with mental disabilities. It is concerned about the very concept of guardianship. Similarly, groups like the Advocacy Coalition and seniors' associations will be making other submissions. They may propose legislative amendments to respond to their specific concerns. You must consider them carefully and weigh them against other perspectives that are presented.

From the beginning of the process of developing this legislation, every Attorney General has been open to changes that would improve it without jeopardizing the principles on which it is based. I am honoured to be part of this tradition.

The bills began with representatives of the community organizations acting together on an advisory committee to the Attorney General, the Minister of Health, the Minister of Community and Social Services and the offices responsible for seniors and disability issues. Let me just remind you of those who participated in the Fram committee and the organizations they represented:

Doris Baker from the Ontario Association of Professional Social Workers; David Baker, Advocacy Resource Centre for the Handicapped; Gianni Corini, Adult Protective Services Association of Ontario; Brian Davidson, Canadian Mental Health Association; Dr Patricia Defeudis, Ontario Psychological Association; Howard Epstein, Canadian Civil Liberties Association; David Giuffrida, and before him Dr Tyrone Turner, of the Psychiatric Patient Advocate Office; Dr Stephen Kline, Ontario Medical Association;

Ivy St Lawrence, Ontario Advisory Council on Senior Citizens; Carolyn Shushelski, Ontario Hospital Association; Paul Vesa, Canadian Bar Association—Ontario; Judith Wahl, Advocacy Centre for the Elderly; Rod Walsh, Ontario Association for Community Living.

We should not forget the government representatives: from the Ministry of Health, Dr Barbara Blake, Dr Gilbert Sharpe and Debi Mauro; from the Ministry of Community and Social Services, John Wilson, Sharon McClemon and Peter Wiley; from the office for seniors' issues, Alan McLaughlin; the public trustees, Bert McComiskey and Hugh Paisley; the official guardian, Willson McTavish, assisted by Doug Rutherford; and, of course, the chair of the committee, Stephen Fram, who is seated here to my right.

These public hearings are an essential part of a very open process of designing principled legislation to address very real human problems. The ministry will continue to meet with organizations and to listen. Mr Fram, who is counsel with the ministry, will be available to assist the committee in its work of ensuring that we have the very best and most principled legislation. May I say to the Chair and to all members that if I can be of further assistance to you, I am available to answer questions now, and I will do whatever I can to forward this process.

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**Mrs Sullivan:** Minister, as you know, you are the third minister to present to our committee in relationship to these bills. We concur with your view that they are complicated, and one of the things, of course, that we are very concerned about is the nature of the way in which the bills overlap and fit together. We had felt earlier on that it would have been more useful for the bills to have been put forward in a draft form and used as a consultative document so that the integration of the bills could have been perhaps more efficacious for those who are going to have to apply them later.

We are also extremely concerned, by example, that in the area of advocacy, there is no specific definition, either in your bill where advocacy services are very much a part of the process or in the Consent to Treatment Act or the Advocacy Act, of the role or the mandate of advocates, whether it is in rights advocacy or social advocacy. The guidelines for determining the roles of advocates will be by regulation rather than statutory. Frankly, we feel that because that role, that mandate and the operation and standards for advocacy are so vital in the course of all of these areas, whether it is substitute decision-making, rights advocacy relating to consent or advocacy on systemic issues, that they should be defined.

One of the things we will want to insist on as we proceed through these hearings is that there be a more firm definition of the specific role of the advocate that is laid out for all to see, that it is debated publicly rather than behind closed doors as regulations are made and that vulnerable people themselves who are participating in the debate and discussion have an opportunity to discuss those roles in a public way. Once again, the training and screening of advocates is by regulation in your bills. We see that as a matter of some concern.

You have indicated in your remarks that: "Advocates are not decision-makers for vulnerable people. They are not given and should not have power over vulnerable people." However, you also say, "When an advocate finds that a vulnerable person is mentally incapable," which is a new role for the advocate. We do not understand why, if advocates are not to be decision-makers, that is not specifically defined in the act.

**Hon Mr Hampton:** I am not sure where you want me to begin, but I will try to begin at the beginning.

First of all, with respect to advocates, you have to appreciate that this is not part of my legislation, and perhaps you should talk further with the Ministry of Citizenship about this. Everyone appreciates, however, the very important role that advocates have to play in ensuring that these three pieces of legislation work well. The role of the advocate is so important that many groups which are vitally concerned with advocates and the work they do ask that they have more time to work within the community as to how advocates will function. That in part is the reason it was left to regulations. Part of this process from beginning to end has been that there has to be ongoing interaction with the community of people out there who will be vitally affected, and that is what the government is trying to do.

To try to arrive now at a precise definition of each and every role an advocate will play would, I think, be very difficult and would not be giving the due respect and confidence to the community that is out there and involved in these issues on an ongoing basis. However, that is something you can and should take up with the Minister of Citizenship at greater length.

With respect to how advocacy fits into this bill, advocates will be forming opinions all the time. I think the important thing to focus on, however, is that advocates will not unilaterally act on what their opinions may be. As I have tried to point out today, once an advocate in a given-fact situation formulates a view of what is happening, that someone may be abused or someone may be exploited, they cannot unilaterally take action. For example, in the scenario I pointed out today, the public trustee must become involved. I think that is the important step.

While we have allowed a great deal of liberty to advocates and while we have not precisely defined all of their functions, the important factor or issue, at least with respect to the Substitute Decisions Act, is that the public guardian and trustee must become involved in a great many of these situations. So, again, the safeguard is there. That is a very large part of the overarching principle involved in these bills: putting safeguards in place so that whether it be an attorney or a guardian, whether they be given a power of attorney, whether they be appointed by the court or whether they be an advocate, everyone is accountable. There are checks and balances in the system to ensure that accountability. The eventual outcome or ultimate goal is to provide the appropriate protection for those people who are most vulnerable.

**Mrs Sullivan:** Minister, you have spoken about safeguards. One of the things I note is that the bill does not outline the standard of proof that would have to apply in

the appointment of substitute decision-makers. Once again, the compendium points out that this will be defined on the basis of a balance of probabilities. That would mean that the probability is that the person is likely to be incompetent, or more likely to be incompetent than not incompetent. However, that is not specifically set out in the bill, and we are quite concerned as to why it has not been set out in the bill.

**Hon Mr Hampton:** I think we have to recognize that generally in our scheme of law covering issues in these areas, we only specify what the standard shall be when we vary from the balance of probabilities, and we have not varied from that here.

**Mrs Sullivan:** Would you accept an amendment including the standard of proof required?

**Hon Mr Hampton:** I think what we have to recognize is that all three bills stand together and all are based upon the balance we have chosen. Before we accept an amendment, we would want to look at how it affects the scheme which runs throughout the three bills.

**Mrs Sullivan:** I will let the questioning go on, but I suppose I would just underline that we are as concerned about what is being left out as what has been included, and the interrelationship between them, one bill to the other.

1600

**Mr Carr:** Thank you, Minister, for coming and giving us the information. I was interested in one of the questions in the broader sense with the public guardian and trustee. How many cases would you envision we would be looking at in Ontario in a year? Do you have any guess right now? It would be a guess, I imagine, but ballpark in terms of the number of cases we would suspect may happen. Any idea?

**Hon Mr Hampton:** We do not, although the thinking that has gone on around this issue is generally that at the front end the office of the public guardian and trustee will be very busy. We have spent a fair amount of time over the last year looking at what additional resources the office of the public guardian and trustee would need in order to meet the case load.

**Mr Carr:** I was interested in the definition of "incapacity." In defining that, where does the input come from? I suspect it has been from the legal community, but where have we looked for the input with regards to that?

**Hon Mr Hampton:** Common law. Many of the concepts that we are arguing about in the legislation have been around for some time. They are not new concepts. They are concepts that have been argued about time and time again. So the common law is the source there.

**Mr Carr:** So we are not looking to define it in terms of this bill. Okay. One other thing with regard to the, for want of a better word, living wills where people decide, is there anything in this piece of legislation that will assist the medical practitioners in fulfilling some of the requirements of people in terms of what their wishes are?

**Hon Mr Hampton:** I wonder if you could be more specific. If we have, for example, a power of attorney for personal care and the individual sets out that he does not wish to be subjected to certain types of medical treatment



and is fairly specific about that, then what would your concern be?

**Mr Carr:** I was just wondering, when would there be an intervention by, say, an advocate in a situation like that. Before, we had a situation come up where somebody would say, for example, "You don't want treatment if you have a terminal disease." But as you know, it might have been made a few years ago, and now all of a sudden there is some treatment that may assist you. Do you see an advocate jumping in to supersede the will of somebody? Do you see that changing at all?

**Hon Mr Hampton:** Those kinds of issues are in fact dealt with in the Consent to Treatment Act.

**Mr Carr:** You do not see anything changing with regard to this?

**Hon Mr Hampton:** I do not see a problem at this point in time. A great deal of thought has gone into working out how the three bills will work together. Once you get into the scenario you are into, you look to the Consent to Treatment Act for guidance. Physicians would look to the Consent to Treatment Act for guidance as to how they are to interpret and what the requirements are for them.

**Mr Carr:** As a result, as you know, there has been tremendous interest in these very complex bills with a lot of people coming forward. Do you anticipate many amendments coming forward, and if so, how willing are you to look at some of the amendments?

**Hon Mr Hampton:** As I have indicated, there are some issues from particular organizations in the community that you are going to have to grapple with and you will have to weigh competing values and competing concerns. I fully expect that some amendments will come out of this committee. I expect there may be vigorous public debate over some amendments that may be proposed by particular organizations and there will likely be vigorous debate within this committee. Whether those amendments eventually are incorporated into the bill or not will depend on those debates.

As I said, I do not believe the legislation you now have before you is the final answer on all these questions. You have a role to play here.

**Mr Malkowski:** If we look at history, service providers, families and also the persons with disabilities themselves, often the opinions are in conflict or we have conflicting perspectives. Specific to the consumer groups, do you have any feedback from, for example, People First group? Do they have any concerns about the Substitute Decisions Act?

**Hon Mr Hampton:** As I indicated in my statement, we have received representations, for example, from Ontario Friends of Schizophrenics, the Ontario Association for Community Living and other organizations that are concerned about specific sections or concepts in the bill. I would not tell you that everyone is unanimously happy with the proposed legislation, precisely because what we are trying to do is balance some very difficult social issues. You want the state there as protector of abused and neglected individuals in some circumstances; yet you want to be very mindful that the state does not overstep its bounds.

We give particular institutions and offices in the bill authority and power but we have tried to incorporate in the bill at the same time checks and balances on that authority and that power so that we can guard against the situation where somebody who is given a powerful role under the legislation then abuses it.

In summary, yes, there are groups and organizations which are not completely happy with what we have provided. But over the course of the eight years the Fram committee has been working it is fair to say that almost every possible scenario and issue has been debated back and forth a number of times. The best attempt that can be made has been made to achieve consensus.

**Mr Malkowski:** The Ontario Association for Community Living is a service provider perspective. The Ontario Friends of Schizophrenics is a family perspective. So what is missing is the consumer group or the persons with disabilities themselves. I just want to make sure we include those consumer groups so that their specific concerns are shared. Hopefully the People First group will be invited to share their perspectives with us on the Substitute Decisions Act.

**Hon Mr Hampton:** People First have expressed their concerns, and of course one of their concerns is the role of guardians in all this. That is a concern that is shared with OACL, who also take issue with the authority and power the guardians are given under the legislation. I expect you will be hearing from People First.

1610

**Mr Chiarelli:** You indicated this is the best attempt at the legislation after a number of years. I just wondered if perhaps the best attempt still misses the mark. I say that with a sense of being constructive. When the Minister of Health was here last week, her comments were replete with qualifications. There are concerns about this particular matter. There are alternative ways to do that particular function or what have you.

Today in your comments you also raise probably more questions than you answer, and what concerns me is that we are dealing with a bill that has had second reading. We are dealing with a real live wire here. I think there are too many unanswered questions to be dealing with a live bill.

I had suggested to the Minister of Health that perhaps the bill should be withdrawn and brought back immediately to this committee as a draft bill rather than as a bill some people perceive as a bit like Russian roulette—a gun is at their heads and something is going to be passed. There are just too many amendments and too much time to gather the pieces to make any sense.

For example, in your remarks today, I really think it is unacceptable at this stage that the Attorney General could come before a committee with this type of legislation and indicate that we still have to create a precise definition of "advocate." If you are not prepared to put a definition of "advocate" on the table when we are beyond second reading at committee clause-by-clause stage, I think it is irresponsible, because we cannot go any further without your providing that definition.

You raised concerns, for example, of the Ontario Friends of Schizophrenics. I want to know from you, as the Attorney General, whether you have provided a satisfactory answer to these people for their concerns. Can you tell me whether or not you feel this legislation properly answers their concerns?

**Hon Mr Hampton:** Dealing with the issues as you have raised them, first of all, your indication that perhaps we should go forward with draft legislation and open up matters for another round of consultation, I only want to tell you again that there have been eight years of consultation around these issues and that consultation has been fruitful.

However, you can consult probably into the next decade and some of these issues will not come to a head and will not be worked out until you are presented with live legislation. Then groups and organizations will make the compromises that are necessary. I make no apology for that. There are compromises that have to be made in these bills simply because we are dealing with some very important but competing interests and competing values. You may differ with me and with others in terms of our judgement, but our judgement is and has been that now is the time to go forward with legislation and try to work out the compromises that will always have to be made.

Again, with respect to advocates your judgement may be different. You are entitled to that. But the message we have heard loud and clear from the community groups is that they want to work out, in the regulations, what the roles and what the context will be in which advocates work. We are doing our best there to meet the expectations and the requests of the communities that are most vitally concerned with how advocates shall work and what their realm of responsibility shall be.

Finally, with respect to this legislation, I can say to you that we are more than reasonably confident that the scheme of this legislation meets the expectations of the community at large with respect to the protection of vulnerable people and with respect to guarding against their abuse and their neglect. There may be—I have indicated this in my opening statement—particular community issues or particular instances where the balance of the compromise may change slightly, and that is a role for this committee.

Sometimes when we bring forward legislation and say, "This is it, this is the legislation, we want it passed," we are criticized for not being open to compromise and to considering other points of view. Here we are bringing forward what I believe to be very good, very thoughtful legislation, but we are saying to you there is still some room for compromise, there is still some room for thought and for changing some of the balances. That, to me, does not indicate the legislation is flawed. But you and I may differ on our judgement there.

**Mr Chiarelli:** I guess we differ. My opinion is that it is very difficult to say it is very good legislation at this point because there are so many holes still to fill in, such as the definition of "advocate." What I want to do is suggest to you and your fellow ministers in the government that we

have just recently set a precedent in this place with the health professions legislation. You well know how that legislation was initiated and that in fact it went over the life of three governments. That was introduced by way of draft legislation; the legislation was subsequently introduced. It was a very slow, meticulous process. There was a tremendous amount of consultation.

There was a process of consultation by different segments of the health professionals out in the field. That process worked quite successfully and a lot of the problems were ironed out in the process. I think the previous governments can take credit for that. I think your government can take credit for it because you took it over and completed it and refined it. All I suggest to you is that I believe we are looking at legislation that perhaps is more significant, much more complicated and certainly much more personal and emotional to the people of Ontario.

I suggest that you will be doing yourself a favour as a government, because I think you are walking on a floor of mud here. You are going to start sinking in it as soon as you get into specifics and clause-by-clause. Most particularly, I want to bring to your attention the process that you well know we go through on clause-by-clause analysis of legislation. I want you to anticipate what we will be doing in clause-by-clause of this legislation. We will almost have to do clause-by-clause of three bills at the same time, they are so interrelated. You are going to have to find a process that is new and different in many respects, dealing with three bills at the same time.

I suggest to you, if you are not prepared to withdraw the legislation, that you be prepared to give assurances that there is going to be a cooling-off period or what have you, after we have had clause-by-clause, for people to respond. I am not sure at this point that we have the ability in this committee to juggle all those bills at the same time. It is very complicated legislation. The process, I think, will be scary to people. The people who are concerned now, I believe, will be more concerned after clause-by-clause, in spite of the amendment process and the consultation process.

In conclusion, I feel there are too many gaps in your legislation. The legislation leaves too much to be done by regulation. You know that regulations are done behind closed doors, they are done in cabinet and they can be changed without notice. You are dealing with very significant components of the legislation. The definition of "advocate," for example, goes to the very heart of this legislation. What you are saying is that even if you provide us with the draft definition, which I understand you have not done, and it is passed, the government can change its mind the next day by regulation and redefine it.

I raise some cautions here not because I like or dislike this bill. I am concerned about the people who are interested in this bill. I am concerned about the process. If you are simply going to proceed with this legislation in the normal course and have public consultations and clause-by-clause, pass the legislation and then pass significant regulations afterwards, then I think you are doing an injustice to a lot of people interested in this issue.

**Hon Mr Hampton:** If I can respond, Mr Chiarelli refers to the need for draft legislation and I would simply like to



point out that when the committee prepared the report at the end of 1987, it included in its final report draft legislation. So in fact draft legislation has been available for review since the beginning of 1988, almost four years ago.

1620

**Mr Chiarelli:** Of which you just became aware. Think of the public. You are the Attorney General.

**Mrs Sullivan:** I would like to point out that the draft legislation related only to the one bill that the Attorney General is speaking about now, not to all of the three inter-related pieces of legislation.

**Hon Mr Hampton:** Again, draft legislation has been available since 1988 and it is draft legislation, at least from the perspective of the Ministry of the Attorney General, that has drawn a great deal of comment and discussion. I simply point out to both members of the opposition that their call for draft legislation, at least from the Ministry of the Attorney General's perspective, was answered four years ago.

Mr Chiarelli wants to come back to the issue of advocates, and I say to him again, in responding in the way we have on the issue of advocates, we are merely responding to requests that have come from the community that advocates and the role that advocates are to perform be things put into action by means of regulations so that they can be dealt with in the most flexible manner possible. You may object to that. The government is, as I say, merely responding as best it can to requests that have come from people vitally concerned in the community. I think that is only appropriate, given the nature of the legislation we are dealing with.

**Mr Chiarelli:** I would ask you another question. Would you explain to me what these two sentences mean? I am quoting from your remarks: "Advocates are not given and should not have power over vulnerable people. When an advocate finds that a vulnerable person is mentally incapable and is being exploited, neglected or abused, there must be someone to whom the advocate can turn to take action." What do you mean by, "When an advocate finds that"?

**Hon Mr Hampton:** As I indicated earlier, advocates are not given in this legislative scheme the power to make substitute decisions. Advocates are just that: Their role in this scheme is to inquire, to investigate and to act as someone who is on the side of or acting in the interests of a vulnerable person. But there is a clear separation of duty and authority.

They investigate, they inquire. If they discover a situation which indicates there is neglect, there is abuse, they then do not have the unilateral power to act. They must refer to the public guardian and trustee, or they must look to the family to see if there is someone who is able and prepared to act there. That is the role of the advocate in this system. They are not usurping the role of the public guardian and trustee. They are not usurping the role of an attorney. They are, as the term indicates, advocates.

**Mr Chiarelli:** Could I ask a question. I am not trying to be unduly technical or difficult, but I am looking at your words and I am going to suggest to you that maybe the explanation you just gave suggests to me that perhaps the wording in your remarks is not exactly precise.

You indicate here, "When an advocate finds that a person is mentally incapable...." Do you really mean to say when an advocate finds that a vulnerable person "may be" or "appears to be," because then you go on to say, "then there must be someone to whom an advocate can turn to take action." So either there is a determination or there are a set of facts which arise, which creates some questions in the minds of the advocate which dictate to the advocate that he or she should direct that person to somebody else. Now what is it exactly that you mean by those two sentences?

**Hon Mr Hampton:** Obviously when an advocate encounters a given situation, he will form his own conclusions. We have to recognize that. That is, I think, in practical terms how some of these scenarios will work out. The important distinction to make is that advocates do not have the statutory authority to make a finding that someone is incapable. Though they may, as advocates, form that conclusion in their own mind, they do not have the authority or the power under the legislation to make a finding within the terms of the legislation.

Second, to make the distinction again, they do not have the power or the authority that the public guardian and trustee would have or that an attorney for personal care or a court-appointed guardian would have. That is the distinction; they are advocates.

They are not given the authority that a medical doctor might be given, they are not given the authority that some other assessor would be given, but in the real workings of the real world, they will undoubtedly form their own conclusions in given scenarios and they will act on those conclusions in terms of going to the public guardian and trustee or in terms of going to someone else who is given authority under the legislative scheme.

**Mr Chiarelli:** I have a specific question and then I have a more general and a process question. First of all, can an advocate initiate an incompetency proceeding?

**Hon Mr Hampton:** A court proceeding?

**Mr Chiarelli:** Whatever process would be established under the legislation ultimately; probably a court, yes.

**Hon Mr Hampton:** The scenario I want to look at is this: If an advocate enters an institution and encounters a given situation, can he directly—is that what you are saying, "Can he directly"?

**Mr Chiarelli:** Yes.

**Hon Mr Hampton:** No, they cannot. That is not their role.

**Mr Chiarelli:** Who can initiate an incompetency proceeding?

**Hon Mr Hampton:** The public guardian and trustee. Again, if you followed the remarks I have made, the role of the public guardian and trustee is very important. The public guardian and trustee's office has an important role to play in ensuring that the rights of vulnerable people are observed and respected. It is a very important role in terms of ensuring that attorneys and guardians live up to the powers given to them and do not abuse them or do not extend them. It is a very important role.

**Mr Chiarelli:** I asked you a specific question and you gave a specific answer. The answer had to do with the definition of an advocate and the advocate's role, which is yet to be defined by regulation. Is that correct? In which case, if it has yet to be defined, how can you be so definitive with your answer?

1630

**Hon Mr Hampton:** I can be definitive in terms of what types of statutory powers and authority an advocate will have. How advocates will come to work in a practical sense is what will be left to the regulations. Again, I think it is very important that you focus on the statutory power and authority that the office of the public guardian and trustee will have. It is important that you recognize the general role the advocates will have.

How that works out in a practical sense is something that will be left to the regulations. That is the request we have had from community groups, that we do it that way, because they see the need for some flexibility in coming to terms with the practical, everyday work of advocates.

**Mr Chiarelli:** I am going to leave you with one further comment. I know there are other people who do want to ask questions.

I believe it is irresponsible to deal with this legislation without draft regulations. The two are so intertwined. Regulations, as you know, have the force of law and traditionally are to do with minor process and minor changes to legislation. As I understand it, the regulations that will be applicable to this legislation will be very significant in terms of defining what happens with the legislation itself. Therefore, I want to ask you: Yes or no, are you prepared to provide draft regulations that could be used at the time this committee would be doing clause-by-clause?

**Hon Mr Hampton:** I have no responsibility with respect to the Advocacy Act, and that is really an issue you should take up with the Minister of Citizenship. But there are no regulations required under this bill I have presented here today.

**Mr Chiarelli:** So we are talking about three bills. I want to know who has carriage of the three bills. Obviously we cannot be dealing with them in isolation. There has to be some sort of co-ordinating person.

I asked a specific question about regulations, and you are saying, "That is another minister." We have had three ministers in, and I want to know how you are co-ordinating it and how you are making your decisions internally. In point of fact, how are we going to be able to do clause-by-clause with three different ministers and three different bills?

**Hon Mr Hampton:** Mr Chiarelli, I indicated to you when I began my statements that you are going to have to work hard on this legislation. There are difficult issues here. I cannot make them any easier for you, but I can tell you this: If you have a question specifically with respect to the Advocacy Act, which is what I think you are giving to me now, you should address that to the Minister of Citizenship and her parliamentary assistant.

**The Chair:** Thank you, Mr Chiarelli. I might remind you that the minister, Elaine Ziemba, will be back here after all the presentations to wrap this all up.

**Mr Carr:** Attorney General, the problem I think we are getting at is a concern for the powers the advocates will have. When the Minister of Health was in, she talked about it and said that she really was not looking for the advocates to assist or become involved where there has been a family involved, but if my memory serves me correctly, she said that in most cases it will be where there has not been any family or friends and so on.

One of the concerns many individual groups have is that all of a sudden some of the family or friends will be pushed aside. For example, an advocate comes into, let's say, a seniors' home and makes a determination that an individual is not receiving the care that he or she needs, and becomes involved where family and friends have been involved in doing it, and for whatever reason makes a determination that there is some problem there. That is why I was interested in trying to get at the number of cases you are looking at, whether we are looking at a massive amount of cases, and when you do not know, it makes it very difficult.

I would have thought that when we put legislation together, we knew—not specific numbers, but that there was a real concern out there for this piece of legislation, and I am not getting that. How are you going to alleviate the fears of people who are seeing this as intervention into the personal affairs of an individual and, as Attorney General, what assurances can you give to people that this is not your intention and is not what you are trying to do with these?

**Hon Mr Hampton:** Your specific concern here is covered under the Advocacy Act. But generally, let me make this comment.

I agree with the Minister of Health that advocates will not usually become involved in situations where there are members of the family who have been acting or are prepared to act on behalf of a vulnerable individual. None the less, there may be situations where advocates will become involved, because advocates may, in the course of doing their work, become aware of someone who is a vulnerable individual who may be neglected and who may be abused or exploited, even though family members are involved in the situation. An advocate in that situation would refer such a situation to the public guardian and trustee. Remember that part of the role of the public guardian and trustee is to ensure that individuals who are acting under a power of attorney or individuals who are acting as guardians be held to account.

There have to be checks and balances in this system. But I would subscribe to the view the Minister of Health has indicated, that ordinarily you would not see advocates involved in a situation where members of the family are prepared to act and have been acting.

**Mr Carr:** In terms of the advocates, they have a tremendous amount of power. You say they do not, but they do because they can then go to the guardian trustee.

With regard to their power, from a legal standpoint, what safeguards are there? For example, if somebody becomes involved—using the example in a relative's case—and says there is a problem, what safeguards are there, through any of the legislation, that the advocate can be



held responsible for his or her actions if he or she acts improperly? Are there any safeguards, or how do you see that working, in terms of what happens if we have an advocate who does something we disagree with, or I disagree with something with my family or whatever? What are the procedures and how long do you see that taking, going through to fruition?

**Hon Mr Hampton:** Once again, you are dealing with an issue that is dealt with specifically in the Advocacy Act. There will be an advocacy commission that will oversee the role and the function of advocates, but I want to point out to you again, and I gather you and I have some disagreement over this: Advocates do not have authority or power with respect to someone who is acting as an attorney or someone who is acting as a guardian.

They can report a factual finding from their part. They will have powers of entry, for example, to enter a rooming house and to see if someone is able to take care of himself or if in fact someone who is supposed to be acting on his behalf is acting to take care of him. They can make a report. That is it. In that report they can report what they have seen and what they have observed, but that is it. That is the limit on their power.

1640

**Mr Carr:** You are right that that is in terms of what they are capable of doing. The problem is, though, and I was thinking more from a legal standpoint as Attorney General, what safeguards would be there against some of the powers of these individuals if, for example, somebody believes that because what will transpire is that action will take place as a result of them going in and looking at a situation. The big concern is that these people are going to have a tremendous amount of power. You are saying that they will not, but from a legal standpoint, what will be the safeguard so that that individual will be held accountable for his or her actions? What would the procedures be?

**Hon Mr Hampton:** Those are covered under the Advocacy Act.

**Mr Carr:** Which is what? Do you know offhand?

**Hon Mr Hampton:** No. I do not have all of the details on how the Advocacy Act deals with it, but there is an advocacy commission developed under the Advocacy Act which sets out how an advocate can be guided in his or her work by the advocacy commission. That is something you should really ask of the parliamentary assistant to the Minister of Citizenship or of the Minister of Citizenship, since they have had the overwhelming role in the drafting of that legislation.

**Mr Carr:** But, as you know as Attorney General, you have the difficult task of overseeing all legislation from a legal standpoint. In your opinion as Attorney General, do you think the safeguards are there as it is written now? That is what I am asking. Are you confident the safeguards are there?

**Hon Mr Hampton:** I have already noted that you and I have a disagreement over the power and authority advocates will have. I think your estimation of the power and authority that advocates are granted is somewhat inflated. I think that is the source of our disagreement here. However,

in terms of what advocates can do and in terms of there being an overseer, a check and a balance in the system to deal with advocates, I believe the advocacy commission will adequately deal with that. That is one of the primary reasons why we will have an advocacy commission.

**Mr Carr:** When you talk about the power of entry, for example in a rooming house, would that include private homes as well? For example, if my mother lived with me and I was looking after her, for argument's sake, and some neighbour said that there is a problem there, would advocates would have full authority?

**Hon Mr Hampton:** Again, that is all dealt with in the Advocacy Act. If you want to address those questions specifically, you should go through the Advocacy Act and take it up with the Minister of Citizenship.

**Mr Carr:** When we dealt with the minister on that, there were some legal situations that I do not think we got any clear answers on. I was just hoping that as Attorney General from a legal standpoint—but you are right. You have said that a couple of times so we will do that and address it with her as we go back.

The problem was that I was not all that confident in the answers we got, so as we are dealing with these bills altogether, we are trying to impress upon you where some of the concerns are just so you know, because that was what some of the public concerns are. They are not my fears, because I have not formulated opinions. They are just some of the fears we have been receiving from the public. Hopefully, as we try to look at all these bills together, you will be able to look at it as well from that standpoint and appreciate where some of the concerns are coming, because it is a complex issue. When we say, "These are some of the concerns," it is from that standpoint.

That is basically all I have for now, Mr Chair.

**Ms Carter:** I think these are good pieces of legislation. The thrust in all of them is to give the power of decision to the vulnerable person, the person who is affected, and I think that is the direction in which we should be going. However, I just want to raise one particular case that was brought to me in my constituency that puzzled me slightly. I wonder if the Attorney General could throw any light on it.

This person had a relative who was in a mental institution and had been there for many years so was presumably deemed incapable. But there had already been a change in the way she was treated, and this constituent seemed to think that we had already passed some legislation that had affected this, although of course obviously we have not. We are still debating the legislation. This person had I think it was \$100 a month allowance and so many cigarettes doled out so often. There had been a change and the institution had abdicated responsibility for this, gave her all her money at the beginning of the period, allowed her to receive unlimited quantities of cigarettes and to smoke them whenever she wanted. The relative was very concerned that this person would damage her health and in effect kill herself eventually.

First of all, I am not sure what has changed. I do not think this legislation is going to give rise to that kind of situation, but supposing this situation does arise, as it obviously had in this case, would the family member have

recourse by applying to become a guardian and to decide what that person would be allowed to do? Is it up to the institution? Does the institution have the power to regulate those things, or what is the situation?

**Hon Mr Hampton:** The family member would have the opportunity under this legislation to apply to become a guardian.

**Ms Carter:** So in fact, instead of being the cause of the anxiety he is bringing to me, this legislation could provide the answer to it.

**Hon Mr Hampton:** Part of the problem we have had is that in Ontario we have many individuals who are institutionalized and many of these decisions are now made or have been made by institutions, with no particular guidelines and no particular regulatory scheme for addressing what may be the desires of the individual for whom the decision is being made or what may be in his or her best interests.

**Ms Carter:** If this institutionalized person decided that she in fact wanted to spend all her money at once to smoke unlimited cigarettes, does that now become her right or would she be deemed incapable and restrained from doing this?

**Hon Mr Hampton:** That would be a factual situation of determining in this particular instance if the person is indeed incapable. The legislative scheme envisages, conceptually, situations where someone may be deemed to be capable for the purposes of some decisions and not capable with respect to others. That would be something that would have to be factually determined based on the circumstances.

**Mrs Sullivan:** I think we spend a lot of time on the advocacy portion, while advocacy and advocates are only included in about three sections of your bill. Because of the new conceptual implementation and involvement of advocates in a very formal way, there is interest in how you see advocates folding in, and the words that you spoke today led us to believe that the intent was different from what is included in your bill in terms of the role of the advocate in your bill. I am going to go on to another thing about your bill, but it seems to me frankly that the advocates were plunked in on the substitute decisions bill after the substitute decisions bill was written. That is just the way it looks.

Anyhow, I want to go on to a couple of other questions relating to substitute decision-making. First of all, in section 56, one of the issues which is discussed in that area and for which the guardian will not have the power of making decisions on behalf of the person he is representing relates to research.

We know that when you are dealing with people who are ill or who may not have the full understanding relating to the procedures that would be used for research matters and so on that frequently, even with the person who has no incapacity, it may be difficult to explain what the process would be, what the relationship would be so that the people could participate as part of a pool, whether it is reporting of statistical data or whether it is other information.

I went back to the Fram report, as a matter of fact, and noted that in the report originally, which is where this section came from, the report said:

"The committee believes it should be made abundantly clear in the legislation that a guardian with authority to give or refuse consent to therapeutic treatment should not have the authority thereby to consent to the involvement of the person under guardianship in any scientific research or experimentation. However, the committee believes that some scientific research or experimentation may be of such benefit to the individual or to classes of person who are mentally incapable, and at the same time of such low risk to those involved, that an absolute bar should not be imposed."

1650

I thought that was very interesting. I have been speaking with Alzheimer's patients and with people who are involved in looking (a) to find the cause of Alzheimer's disease and (b) hopefully to find something to assist us in reaching a cure. We know that now one in four, 25% of people over 80 suffer from Alzheimer's disease. We have an aging population. What the people from that organization say to me is that they are very concerned that with the very strict limitation on research—because it is not defined in any broad kind of a way; it is not statistical, it is just there, "No, you can't consent"—they believe that the research in the Alzheimer's field will be delayed by at least 20 years, that what we will have to be doing now is getting people who are middle-aged to consent through a power of attorney for treatment if they ultimately succumb to Alzheimer's.

I would be interested in knowing why the recommendation and discussion relating to low-risk research, to recording of data and information and so on, that was recommended in the Fram report is not reflected at all in the legislation. I know that in this kind of legislation—we have talked about it before—we are talking about a broad range of people in terms of what is affecting them, why they may not be capable, where they need to have advocates working on their behalf and so on. The fact is that the range is so broad that creates some of the problems we are dealing with. But I was interested in knowing why there would not have even been an opportunity for legislation to allow perhaps a less invasive kind of research or statistical gathering or whatever.

**Hon Mr Hampton:** Let me first of all deal with your first assertion that somehow advocates were plunked into the substitute-decision-making legislation. If you look at section 45 of the draft legislation, which dates from 1988, you will see there that how an advocate will work in terms of a power of attorney, etc, is part of the draft legislation. How advocates would work in terms of a Substitute Decisions Act was something that has been thought about very actively for at least the last four years and in fact was part of the draft legislation.

For your more technical question, Mr Fram should answer that because this has been part of his work for the last 10 years and he is very well acquainted with the particular issue you raise.

**Mr Fram:** As noted, we were very concerned in the advisory committee report about experimentation on disabled people, mentally incapable people. We put in recommendations which we were not totally happy with, but we did not



have the ability to do any better than that at the time we were doing the advisory committee report. When we were drafting the legislation, the Minister of Health was very concerned to put experimentation and research on a much better footing than the ethics committees that now exist in the hospitals, because, as you know, it is very difficult for an ethics committee to turn down the chance for its facility to do research when the money is coming to its medical facility, and that is a dilemma.

As the Minister of Health announced last week, David Weissstub has been appointed, commencing last July, to do an examination of the research aspect. It is hoped that will be built into the legislation before it leaves here. We put procedure in here, which to physicians is something other than statistical analysis. A procedure is something where consent is necessary, where there is a touching involved. The physicians are not yet happy. They think procedure should be softer than that. Hopefully by the time we are doing clause-by-clause, we will have something better to replace this with than this bar. I have talked to the Ontario Medical Association and the Alzheimer society about it. They have expressed their concern, as you have, about what we have here.

**Mrs Sullivan:** You are expecting then to have quite a substantive and substantial amendment relating to research work included as part of this bill?

**Mr Fram:** Yes.

**Mrs Sullivan:** I also wanted to review, in terms of the changing nature of guardianship and personal care guardianship, the nature of some of the things that have been identified as necessary for these bills to proceed. One is that people may be competent for some decisions at some times and not competent for other decisions at other times. There may be, as a result of a course of treatment or removal from an environmental effect or whatever, a change in the whole nature of the competency. One of the things we see here is a kind of bureaucratic approach, in a way, to the guardianship but also a bureaucratic approach to the removal of a guardianship.

I wonder if you would just address questions relating to removal of guardianships. How might that guardianship be released? If there is a determination that perhaps a greater skill level or level of understanding is attained, is that when a guardianship would come off? Would the application once again be the bureaucratic, legalistic court method? Have you spent as much time in identifying the release of the guardianship and the process for release as you have in getting it on there in the first place?

**Hon Mr Hampton:** Since the questions now seem to be becoming more and more technical in nature, and this is really Mr Fram's area of expertise—as I pointed out, he has spent the last 10 years of his life working in this area, perhaps it is most appropriate that I leave and Mr Fram be allowed to provide everyone with his great resource of knowledge and experience in this area.

**Mrs Sullivan:** Oh, you stay Howie. Come on, I thought you were going to be here for a whole other hour.

**Mr Carr:** You might learn something, Howard.

**Mr Poirier:** Are you appointing Mr Fram as your guardian?

**Hon Mr Hampton:** For the purposes of this legislation, he has been my guardian for the last year. You would do well to adopt him as well.

**The Chair:** Thank you, Mr Hampton, for taking the time out of your busy schedule to be here today.

**Hon Mr Hampton:** Good luck, Steve.

1700

**Mr Fram:** Maybe I should start at the beginning. The idea of the establishment of a guardianship in the report is to try and use the courts as little as possible, only in their hearing capacity when there is something that is disputed, because courts are terribly bad when there are not people presenting arguments on both sides. They are a means of deciding disputes between people. They function very well in that way. So at the committee stage we said, let's try and avoid having court hearings with people drawn in when there is in fact only one party to the proceeding and there is no objection.

A guardianship can take place when a family member has an assessment done on the person who is incapable. The assessment is done by an assessor, by which we mean somebody trained to do mental capacity assessments. This assessment then forms part of an application. The application is sent to the public guardian and trustee for review. If the person is appropriate and if the guardianship plan, by which we mean where is the person going to be, what kind of treatments are contemplated, what kind of care is the person going to get, what is the level of need of the individuals, if that is in place, if there is no objection from the family, the other people who get notice, if the advocate goes out and visits the person alleged to be incapable, explains what it is about and says, "Do you want to fight this? You can do that. I can help you if you want to," and if there is no objection by the person to the process—sometimes the objection may be that it is Betty who wants to be guardian and really it should be Bill, who the person is close to, and that kind of thing can be picked up by an advocate as well—then all the paper, along with the advocate's visit, is sent to the public guardian and trustee. If there is no objection there, no objection from the family, then the court process goes before a judge. If the judge does not find anything wrong with it, the judge will sign the order.

Going the other way is just the same. Terminating an application can be by the person saying, "Hey, I want the ability to make my decisions." If the person gets an assessor to say this person is capable of making that kind of decision, that document is filed and an advocate comes to visit the person. If the person wants to get rid of the guardian, those papers are filed and, if there is nobody else objecting, that is the end of the guardianship.

**Mrs Sullivan:** And if someone objects?

**Mr Fram:** If someone objects, the person who objects is going to have to prove that the person who had or has a guardian is incapable. If somebody wants to get out, the pressure is on those who want to keep the guardianship in place.

**Mrs Sullivan:** And another incapacity hearing or assessment would have to be done at that time.

**Mr Fram:** That is right.

**Mrs Sullivan:** As well, I wanted to explore with you the question of wishes. I think it is in section 63 that the guardian has to make decisions based on the person's wishes. How do you define "wishes"?

**Mr Fram:** We do not define the term "wishes."

**Mrs Sullivan:** That is why I asked you.

**Mr Fram:** We were searching around for a word. People in all of this medical literature have been searching around for a word. If you use the word "want," it is something connected with "will," and if you have "intentions"—each of those terms gives rise to its own problems. The term "wish" is that form of instruction that can come up when people talk about their lives with each other. It is the conversation you have with your intimate friend when you say: "Gee, I've just watched Betty's grandmother deteriorate. If that happened to me, here's what I would want to happen and not happen."

It is an interesting word because it is that level of explanation of what we expect, we hope will happen to us if certain things take place. It is an interesting word, but it is the closest we have to that kind of concept of when we explain ourselves to our intimate friends.

**Mrs Sullivan:** I think that both in this piece of legislation and in the consent act, we are balancing the wishes of the person involved, the patient usually, against the best interests, someone else's judgement. "Best interests" is quite specifically defined in the consent bill and, I believe, in the Mental Health Act before that, certainly in the common law. "Wishes" is not defined.

The question is, can the wish change over time? Were circumstances different in a hypothetical movement, say, while the power of attorney was in existence? Would the guardian or the attorney for personal care have the right and ability to assume a wish that had not been expressed, that might have changed but because circumstances had changed, perhaps medical treatment had improved, perhaps a facility had changed in the services that it offered—I find that word very difficult and I think that as people who are looking at the act see it, they will see it as difficult too.

I have a woman from my constituency who called and said: "I don't know what this means. My mother said to me a month ago, 'I want to go home.' We brought her home and she said, when we got her there, 'I want to go home.'"

**Mr Fram:** An Alzheimer's case.

**Mrs Sullivan:** She was expressing a wish. It bore a relationship very much to a decision that the family had made but no relationship to the competence of the person. I am having trouble with the word "wishes." I think other people are too, particularly when there is definition of "best interests."

**Mr Fram:** I think we are talking about competent wishes in terms of determining what your attorney or your guardian does. It seems to be a feature of Alzheimer's disease—

**Mrs Sullivan:** With stroke patients.

**Mr Fram:** —and stroke patients that there is a perseveration. People repeat the same words, "I want to go home," and it does not have a relationship to a factual situation. But in fact, determining the competent wishes—and that is why we turn to family first. That is why the bill talks about creating your attorney for personal care, because it is expected that people will choose those they trust best.

In talking to the former public trustee, Bert McComiskey, when we were dealing with the matter in the advisory committee, he said: "No, I have nine children. There is only one of my children that I would trust to be my attorney for personal care and that's the youngest. That is the only one who really knows what I would want in any circumstance."

As I have gone through this, I have said to myself, "Who, after my wife, would I choose? Is there anybody I know and have expressed myself to so intimately?" As you get on and your closest friends die, it becomes even more difficult. That is why this is here.

1710

**Mrs Sullivan:** I guess the other thing we have not talked about at all relates to children and the role of this act—and I do not think we should pursue it today, because we are talking a lot about consent and so on and it might be better for clause-by-clause—but the situation of parents who have died, the guardianship role here under this act in comparison to some of the other acts. That is something that certainly people want to explore at some point.

**Mr Carr:** In application, what, in terms of time frame, are you looking at from beginning to end? How long do you think it will take?

**Mr Fram:** I am not the person to ask really. The committee completed its report in 1987. There was a study after to see what people thought about the report. Bernard Starkman was retained for a year and went around with the report and asked various organizations what they thought about it. That was after the beginning of the last government, and years sort of went by in which it seemed to have gone to sleep. It was put on the back burner and would come back to life as various community groups said, "Do it now," to the government of the time. It has been very difficult to know.

As well, resources are needed in order to bring these acts—advocacy and substitute decisions—into place and time will be needed to bring into place an advocacy commission, a public guardian and trustee's office with the ability to do the duties that are imposed. It is really difficult. Certainly I cannot imagine the act being in force before the beginning of 1993.

**Mr Carr:** I want to get on that, although I am interested in an application for guardianship. By the time it is made and completed, how long will we be looking at for that?

**Mr Fram:** I would guess it would be in a couple of months if uncontested; for ever if it is contested.

**Mr Carr:** Yes, because then we go into the courts.

**Mr Fram:** In fact, if you talk to groups for the disabled, that is exactly what is intended, that it should be



very difficult. If someone wants to fight for his capacity to make his own decisions, it should be very difficult to take that right away from him. On the other hand, when people do not want to fight and the facts are there, that is when they need a substitute decision-maker. That is very deliberate, when I say that. That was the intention of the advisory committee and it is perpetuated in the act.

**Mr Carr:** With all the safeguards that are built in, with all the people who need to be advised, that is what you are saying, you are probably looking at about two months if there are no problems, if they go through and there is no disagreement at all and that is what we are looking at.

Just a ballpark figure again, what number of cases do you anticipate will be contested? Is it something where most of them will not be, or do you think most of them will be?

**Mr Fram:** We can only guess in terms of applications now under the Mental Incompetency Act, and there are about 350 applications a year for committeehip over property. Very few, if any, are contested. Most years there are no contests. The Justin Clark case, where the parents were moving for committeehip of the person, was a very rare occurrence when there was a contested application.

The advocacy component indeed was always part of the advisory committee's approach and the whole of this act is predicated on there being rights advocacy, the streamline procedures, because the whole intent has been to make it real for people with disabilities.

Right now, what happens if you have a mental incompetency application is that a process server comes out to the home of a disabled person, hands him a mass of papers in connection with an application which would terrify any one of us. They do not know what is going on. If you are incapable, you put it on the shelf and you hope it goes away. There is nobody now who comes out and says:

"Here is what this is about. Do you object? Do you want some help in fighting it, or do you think it is okay?"

The whole of the advocacy component is an essential component of the Substitute Decisions Act. Indeed, the committee said that without an advocacy component you should not proceed with the rest of its recommendations under this act. It has always been a vital part of the advisory committee's approach to how the act should work.

In numbers, the tremendous volume of cases will be those people who are now in institutions for whom nobody is responsible for making decisions, for whom care givers are making factual decisions, those without family, whose family is not there. Think about the people in institutions who are developmentally handicapped, and that is two thirds of those who may not have any family at all any longer involved and for whom care givers have somehow been making decisions.

We hope that care givers have been making principled decisions, but no legislation governs them, no authority is given them, and we do not know. We really do not know what kinds of decisions are being made and why. It is for the first time to have somebody who is accountable for the decisions that are made.

That part of the component which will take place over the first few years of the act will be a major set of applications, but after that hopefully the number of applications will be pretty small and over time, with a concerted effort by the public guardian and trustee's office to tell people about powers of attorney for personal care, people will in fact make their own choices for their attorneys. Thereafter the numbers may drop off very significantly so that in the next 10 years there will be very few guardianship applications.

**The Chair:** Thank you, Mr Carr. Any further comments or questions? Seeing none, on behalf of the committee, Mr Fram, I would like to thank you for taking the time out of your busy schedule to appear here today.

The committee adjourned at 1720.

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 17 December 1991

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

Chair: Mike Cooper  
Clerk: Lisa Freedman

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 17 décembre 1991

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent

Président : Mike Cooper  
Greffière : Lisa Freedman



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 17 December 1991

The committee met at 1547 in room 151.

### ADVOCACY ACT, 1991, AND COMPANION LEGISLATION

### LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

NORMAN W. STERLING

**The Chair:** I call this meeting to order. I would like to say I am pleased to have Norm Sterling, the member for Carleton, here. We will be proceeding with Bills 7 and 8. Please proceed and we will follow with questions and comments afterwards.

**Mr Sterling:** In anticipation of my meeting this afternoon, I passed over a very important document to you in the House today and I hope you have had a chance to read that.

In December of 1989 I first introduced the concept of the living will and the durable power of attorney to deal with advance directives. Of course, the former government called an election in July 1990. One of my bills had received second reading in April 1990. The bill died when the election was called.

We introduced Bills 7 and 8 again on November 29, 1990, and they both received second reading by the Legislature and were referred to this committee in April 1991. I was very pleased to see the co-operation of all members of the Legislature in advancing these ideas.

On May 28 of this year I appeared before this committee and went over the concepts involved in my two bills, Bills 7 and 8. Just one day prior to Tuesday, May 28, the government had introduced Bills 108, 109 and 110. Bill 74,

the advocacy bill, which we are all familiar with, had been introduced I think two or three weeks prior to May 28.

At that time I said to the committee that I thought we had two options with Bills 7 and 8. One was to embody the concepts of Bills 7 and 8 in the government legislation that had come forward, or the second option was to use those parts of the government legislation which embodied the principles in 7 and 8 and transfer them into Bills 7 and 8; in other words, improve 7 and 8.

I wrote to the committee two or three days after I appeared before the committee on May 28, and indicated to the Chairman at that time that I thought the legislation surrounding the areas of policy I was discussing in my bills was superior to the legislation I had put forward in my private member's bill. I believe that has resulted from a wider consultation that has taken place by policymakers in the Ministry of the Attorney General and the Ministry of Health over a long period of time, because the gestation period for this legislation has been extremely long; in fact, it has spanned three governments at this time, going back into the early 1980s.

I still maintain that position, but when asked by members of this committee whether I would like to see Bills 7 and 8 live on, I thought it might be useful to keep Bills 7 and 8 there for the options the committee might want to consider after it has heard the various witnesses come before it, who will primarily be targeting the government legislation.

I say that only from the point of view that if it should be the determination of the committee, after it has heard many witnesses, that it would be better to sever out from Bills 108 and 109, in particular, those sections dealing with advance directives and embody those in a different act or piece of legislation, then Bills 7 and 8 would be a handy tool to have in our arsenal if that is in fact what the committee decides to do. I do not think that is going to happen, but I think it is probably useful to do that.

Second, because of the timing of the process, because Bills 7 and 8 had a lead time of two to three months in advance of the government legislation, there were several people and citizens and groups who responded to Bills 7 and 8, or prepared their response in the belief that this committee was going to be hearing briefs about 7 and 8. I do not think it is fair to those people who put in that time to deny them the opportunity to comment on Bills 7 and 8 during the hearings which this committee will be having in the next three or four months.

I would also draw to the attention of the committee that since Bills 108, 109 and 110, Manitoba has developed a piece of legislation that is much simpler than ours. I am going to give a copy of that to our researcher, Ms Swift, and ask her to give that to you.

I would say that at the end of these hearings if there was some concern by the members of this committee that

by putting so much into Bills 108 and 109 we lose the effect of saying to people in Ontario, "You should seriously consider making a living will; you should seriously consider making a durable power of attorney to deal with your personal care," then we have that option.

There is one matter raised in Bill 8 which has drawn some attention, which is not covered in Bills 108 or 109. Bill 8 is my act dealing with the concept of a living will or an advance directive. Under subsection 3(3) of the bill—I put in this section because I had seen it in several pieces of legislation in the United States—"The living will of a person is not valid while the person is pregnant."

That has drawn some responses back from various groups who have a different view of things than I do, but it has drawn a fairly significant response to Bills 7 and 8.

I have discussed this particular scenario with Mr Sharpe of the Ministry of Health, and he points out to me that this kind of situation is not covered in Bill 108, that is, the concept or the situation where a woman making a living will perhaps two or three years in advance of her pregnancy, not contemplating pregnancy but still having a living will which would be valid, is struck by a disease or an illness or an accident which falls in the bounds of the living will; in other words, that her life should not longer be prolonged by artificial means.

According to Bills 108 and 109, there would be an obligation upon the physician to terminate that life, even if by extending that life the child could be born as a result of extending that lifetime.

I throw that out to the committee, that if you choose to take Bills 108 and 109 to their finality, you might want to include a section which would basically invalidate a living will during a period of pregnancy, particularly if the woman had not anticipated the pregnancy when she made the living will. It is a minor point in terms of the overall concept, but it is one which has sparked some debate.

That is it. I am pleased to answer any questions. My bills are rather insignificant in terms of 108 and 109, but the primary purpose of my bringing them before the Legislature was to push the concept along, and I hope I have been able to achieve that in some way.

**The Chair:** Thank you, Mr Sterling. I would like to remind all members that legislative research has put out a summary of recommendations. I believe it is at each of your desks.

**Mrs Sullivan:** I am very pleased that Mr Sterling has once again come forward with these bills. I think it is a tribute to him and in fact to the process when a member takes a responsible and new position in private members' hour and brings forward substantial views and ideas that can be interpreted and massaged so they can be put forward for legitimate debate of interested parties. Mr Sterling should be congratulated for not only having done this in the past but having been persistent in continuing to bring the issues forward.

I am interested in some of the questions relating to the issue of pregnancy he has raised. I would like to know from Mr Sterling if he has had opinions relating to the effect of the inclusion of the pregnancy provisions he has

raised with respect to the effect of the Charter of Rights in that situation.

The other question I would like to ask him, because I did not sit on the committee when his private member's bills came forward in the past, relates to whether there was also a consideration of a living will that would authorize or make provision for tissue and organ gifts, which I think are a matter of substantial concern to the provision of life in many circumstances to other people and which may well be part of what is a living will.

**Mr Sterling:** Thank you very much, Mrs Sullivan. We do not often get to appear in these various roles, so it feels a little uncomfortable answering questions rather than asking them.

At any rate, in terms of the responses I am getting personally the same responses which have been submitted to the committee and are summarized within the documentation. Unfortunately, the responses do not lead to the practicalities of the problem. The people who are interested in these issues are those people who are concerned about, for instance, whether a foetus is a living human being or not a living human being and the extension of those arguments rather than the practical situation.

Quite frankly, I am not interested in debating whether or not a foetus is a living human being. I am interested in providing practical direction to a health care giver who is faced with the question. I received criticism from both sides of the fence, both those who are known as pro-choice people and pro-life people, both making arguments going back to the charter.

1600

I have always maintained—not being a great fan of the Charter of Rights in some instances—that I believe legislators should make laws which are practical and worry about the effects of the charter secondarily. I cannot imagine a case, dealing with this particular issue, where litigation would arise and the question of the charter would come to the fore. I cannot really envisage anybody suing anybody and therefore one party using it either as a sword or a shield in terms of a civil suit or a criminal suit where the charter argument would come up.

I am more interested in not putting a health care provider in a box and providing him or her with directions as clear as possible, that is, what to do with an advance directive should he or she be put in this kind of situation.

I do not really view the charter argument on this, what I consider a very minor issue in terms of the whole legislation, as really worth the effort of going into the charter issue, because I think the people who are interested in the charter issue basically are people who are trying to prove other points; they are not really concerned about dealing with this specific problem.

As to the second one with regard to human tissue, I think it is an omission on my part for not including it or a provision for it in the legislation. I would hope that within living wills they would develop over a period of time a form which would include the provision for people to be reminded that it is a way they can assist other people who follow them, by donating their human organs which can be



of use after they have died. I had turned my mind to only the issue of terminal illness and therefore did not turn my mind to the issue you raised.

But I think it is a valid point, and as we go through our deliberations—and I hope we are going to ask the Ministry of the Attorney General for what a standard living will should look like—I think we should include those kinds of suggestions to the Ministry of the Attorney General so it would include in its standard living will a provision for donation of human organs and tissues.

**Mrs Sullivan:** I want to move more to the technicalities of, I suppose, what is called “the right to pull the plug.” Your legislation speaks more to the refusal of treatment. Do you have a view of a living will being used as a vehicle for the request for a particular procedure?

**Mr Sterling:** I do not know if you are talking about an act of euthanasia or if you are getting that far. I have steadfastly refused to cross that line in terms of this legislation. I have had I do not know how many requests from various television and media people to be drawn into that debate, but I wanted to limit this legislation to not taking any active steps towards the ending of a life.

I think that is another debate for another day after we deal with this legislation. I do not believe this is suggesting euthanasia in any way, shape or form. I view this as a respect for the individual’s right to maintain control over his or her body until the end. I still have trouble with the concept of euthanasia at this time. I would want to hear a lot of debate before I would ever consider such a proposal.

**Mrs Sullivan:** For the last question I wanted to pursue, I am going to move back to the case of the young woman, whose name I cannot remember, who was seriously head-injured in an accident in America and whose parents worked very hard on a DNR, do not resuscitate, situation at the hospital she was located at. Indeed, what we were seeing there was a substitute decision-maker, at that time being the parents, pursuing court procedures to ensure that life-sustaining procedures were not invoked in that circumstance. Karen Quinlan, is that who that was? I wonder why you have stayed away from the substitute decision-maker.

**Mr Sterling:** I was aiming at a more simplified case and not trying to cover the waterfront. As a private member, my resources are limited in terms of the amount of consultation I can undertake, so I was trying to put a fairly easy concept into Bill 7 and Bill 8 and not deal with the harder ones you are talking about.

I have received some negative comments, for instance, from the Catholic Women’s League on my legislation. In the Quinlan case some of the very strong witnesses were members of the priesthood in the Roman Catholic Church; they were a very strong Catholic family. It is interesting to see when they get into the depths of the issue that there is a lot more support for letting nature take its course in all institutions. A lot of people are just not aware of those. That was an interesting sidelight in terms of reading about that case.

**Mr Fletcher:** This is a comment more than anything else. I want to say thank you for bringing these bills forward, especially Bill 8. I say that because of a personal experience. My sister was on life support for a number of

days before we were asked whether to have her taken off. The decision was to take her off and she died. The decision to take her off was because we had spoken many times with our family members; she was one of them, and that was her wish. She had not written it down but it did make it a lot easier for our family. A living will and some previous discussion are, I think, going to help a lot of people who have to face that situation.

I am glad they are here and I can only support what you are doing and your bills, especially Bill 8 because of the experience I have had. That is my comment. I have no questions.

1610

**Mr Winninger:** I too would like to commend the member for Carleton for his undying commitment to this issue and also for acting as a catalyst in bringing this legislation forward.

I am a little concerned, however, were a subsection like 3(3) of Bill 8 to go into our legislation because of the charter implications Mrs Sullivan alluded to. I could think of an example where a court action would invoke the charter.

You are probably familiar with the Court of Appeal decision last year which ruled that a doctor who had given a blood transfusion to a Jehovah’s Witness victim infringing her rights and constituted, technically, a battery on her person.

If we had a situation where we had a living will drawn by a Jehovah’s Witness who specified that she would not, under any circumstances, allow a blood transfusion in the future to save her life and this Jehovah’s Witness happened to be pregnant at the time of an accident, the doctor could then say, “There is a section that makes it okay to give you a blood transfusion.” I cannot think of a more clear case where her rights would be violated.

I wonder if you would agree with my scenario.

**Mr Sterling:** I think that is a real scenario. If I were a doctor, whether I was going to face a \$20,000 suit or not, I would do it anyway. That is my own feeling, so I do not have trouble leaving the section in regardless.

**Mrs Sullivan:** I thought you were a lawyer.

**Mr Sterling:** I guess you have to sort of go with your gut. I understand what you are saying and it is a real case, but notwithstanding that I would leave this kind of section in the legislation, because whether the foetus is alive is not relevant; that the foetus could be alive three or four months down the road, if you want to view it that way, is important enough.

**Mr Winninger:** I raised this point when you presented your bill in the Legislature during private members’ hour: It does not say in subsection 3(3) what “pregnancy” is defined as and whether there is a certain cutoff point. I think that would be very problematic. If it were technically feasible to measure one day’s pregnancy, then a woman’s wishes would be denied on that basis because she would be one day pregnant. It does not make a lot of sense to me.

**Mr Sterling:** You could define that if you wanted to define that within the bill. That is not a big problem. Once you accept the concept or disregard the concept then you

can go on to that. I find that a minor problem, and you are sounding like a lawyer, David.

**Mr Winninger:** Would you pick the first trimester for your definition?

**Mr Sterling:** I have not even considered which trimester I would consider.

**Mr Carr:** I hope the question has not been asked. I want to thank the member for attempting to push this through. I know you have touched on a couple of the areas of recommendations for the government's bill. I was wondering if you could expand a little. What else would you like to see in the government's legislation, if anything, to improve it? Are there any comments you had in some of the other areas?

**Mr Sterling:** One of the problems I have with the government legislation, and I think we will see this as we go through it—I was not able to be here for Mr Hampton's presentation yesterday—is the very difficult way it is set up. It appears to discourage people rather than encourage people to, for instance, make a durable power of attorney, which I consider the more powerful of the two instruments you could draw. It provides for registration procedures, which I do not think is necessary. You register these with the guardian. I do not want the situation to come to the fore where people are guessing what a registration means or does not mean. If it is not registered, does the doctor or does he not follow the wishes of the attorney?

I would really like to see some of the provisions of Bill 108 and Bill 109 simplified as much as possible.

The second problem I see is that it is buried in the middle of a very large piece of legislation. I do not know how many sections there are in Bills 108 and 109, but both of the concepts are buried in two or three sections in bills which deal with a whole number of other matters. I do not know whether that serves the public well in terms of trying to encourage them to make living wills and durable powers of attorney, which is the goal I would like to achieve. They are not difficult instruments to draft. I think they can be done by the layman; I do not think lawyers have to do them. I thought there would be some benefit in keeping it fairly simple and within perhaps a bill which would contain maybe 10 or 15 sections in total.

I have some concern about enmeshing it in dealing with people who are confined for life in mental institutions and that kind of thing. I guess it is more the form I have some difficulty with; the government legislative thrust in combining it with what I consider the average person will not normally run across in his or her lifetime.

I would like to deal with powers of attorney dealing with property and powers of attorney dealing with personal care. Perhaps that would be one piece of legislation. The other piece of legislation I would like to have is one dealing with advance directives, ie, living wills. All that other legislation dealing with the advocates, advocacy and that kind of thing for ongoing care I would like to see separated from the other. That is my personal opinion about the government legislation at this time. But as I said, the people who have drafted the government legislation have consulted widely. I am quite anxious to hear what other groups have

to say about it. I am quite open on it, as far as that goes. That is where I am now.

**Ms Carter:** I also want to commend you for what you have done. I think this is a decision we can all go along with.

I really want to get back to the same sort of point Mr Winninger was on. I think in a general way to say that you have to make an exception in the case of pregnancy is right, but I can see that if we state that absolutely and leave it like that, we are going to run into all kinds of difficulties. There are all kinds of other aspects of that which have to be looked at. Obviously there is a difference between an eighth-month baby to a mother who is prepared to have it and a very early pregnancy where there is no obvious solution as to who is going to look after the baby and this kind of thing.

I was wondering how that would affect it. Suppose a woman said in a living will that if she was in this kind of condition when pregnant she did not want this to be taken into account. Could that then be done?

**Mr Sterling:** You can do anything you want in legislation, as far as that goes. All my legislation said was that the living will would not be a document during that period; therefore, you would go back to whatever is done when you are faced with these situations without a living will. A whole bunch of people would be involved in the decision at that time, I am sure the family and the physician, etc. I am not saying that anything happens as a result of voiding or invalidating the living will. All I am saying is that you are thrown back to where you would be if you did not have a living will.

**Ms Carter:** You are not saying it would be mandatory for the pregnancy to go to term.

**Mr Sterling:** No, that is right. There is a difference in how you interpret what I am doing; I am taking away somebody's rights or I am not taking them away. All I am saying is that it is no longer valid. Maybe I am taking somebody's rights away in terms of dealing with the situation Mr Winninger brought up. I think it is something I can support and I feel that way about it. That is what we are elected for.

1620

**Mrs Sullivan:** I wonder if it might be possible, because I see them in the audience, to invite Mr Fram and perhaps somebody from the Ministry of Health to talk about how the Substitute Decisions Act would already integrate Mr Sterling's proposals and how it would not integrate. Can we do that?

**The Chair:** It would be their option whether they would choose to come forward at this time. They were not scheduled to be here.

**Mrs Sullivan:** They are open and consultative; we know that.

**Mr Sterling:** At one time I was the parliamentary assistant to the Attorney General for the province and I had to sit beside Mr Fram many times. We did not differ that often then, so I know we will not differ now.

**The Chair:** If our guests could introduce themselves for the record, then Mrs Sullivan could proceed.



**Ms Bentivegna:** Giuseppa Bentivegna, legal services branch, Ministry of Health.

**Mr Fram:** Steve Fram, Ministry of the Attorney General.

**Ms Auksi:** Jutta Auksi, legislation policy unit, Ministry of Health.

**Mrs Sullivan:** We have two bills before us for consideration in relation to consent to treatment and substitute decision-making. As you know, because you have followed Mr Sterling's private member's legislation over a period of time, I am sure, his efforts in fact are very much a part of many of the debates surrounding some of the issues: the ethical issues and other issues relating to the legislation before us.

As for some of the things we have raised in the course of briefing so far, today I mentioned tissue and organ gifts, we have talked about research, we have talked about the mature minor—Mr Sterling's bill makes a different provision relating to consent availability—and we have talked about Criminal Code and charter issues, which would have to be discussed in relation to Mr Sterling's bill.

I wonder where you see some of those and other issues we might not have identified fitting in with Bill 108 and Bill 109 where there might be concerns or further consultation necessary. Mr Sterling, as a result of the consultation he has done, which has been quite extensive in terms of the drafting of his private member's bill, may also want to respond to what he has heard from the community he has consulted with.

**Mr Fram:** Wow. In terms of talking about Bill 108, the central notion is there. I think that is clearly set out. In many places where they have expanded enduring powers of attorney and in terms of living will legislation in the United States, the major dilemma is that the legislation has been passed and it does not work. It does not work not because it is a bad idea, but there has to be an integration between what is said and the legislation or the governance of physicians and care givers and so forth.

The courts changed the law on informed consent in a number of classic cases a decade ago, but according to the latest studies of the matter, nothing has changed in physicians' practices. The law can change, but unless you consider, in such a vast field as the health field, how physicians act and you design a process and involve the physicians and other practitioners in that process, you change nothing, because the forces of practice, unless you recognize them, do not let it happen.

In doing Bills 108 and 109, that is why 109 was separated out, so in fact it could be a complete code for health practitioners, starting from the issue of informed consent by people who are capable and going down to the issue of, if someone is not capable who then makes a decision? It is that context that must be given to powers of attorney to make them an effective tool to actually achieve what people want.

The first dilemma with just doing powers of attorney is that, by and large, physicians will disregard it and health practitioners will pay no attention to it as they go on their way, unless it is built into a context in which the practice is changed, and the Consent to Treatment Act is aimed at

changing the practice of health practitioners so that the law can work.

As the Minister of Health said, the issue there is to give people responsibility for their own health care, and the final aspect of that is addressing the issue of health care when you are not around to direct the practitioners, when you are not capable of doing that.

**The Vice-Chair:** Excuse me, Mr Fram. Could I ask that you please confine your comments to Bill 7 and 8?

**Mr Fram:** Bill 7 by itself cannot work without a health context legislation which will make it work. It will be ignored in practice.

**Mrs Sullivan:** Can I break the rule and ask if Bill 109 provides that context or could provide that context?

**The Vice-Chair:** No, sorry.

**Mr Fram:** Talk to you later.

**The Vice-Chair:** We are dealing with Bills 7 and 8.

**Mrs Sullivan:** We understand what we are dealing with, but the issue is the context of the legislation.

**Mr Sterling:** Mr Chairman, I have no objection to people talking about Bills 108 and 109. I think they buy the same ideas, and my object, quite frankly, is to find the best, even if it is not my own.

**The Vice-Chair:** The parliamentary assistant is here.

**Mr Wessinger:** If we are going to ask questions about the Consent to Treatment Act, I think they should be addressed perhaps through me to the staff of the Ministry of Health. It is appropriate that Mr Fram be asked questions relating to the Attorney General, but I think we should try to keep the appropriate staff answering appropriate questions.

**The Vice-Chair:** Mr Wessinger, we are here dealing with Bills 7 and 8. Can I ask that we remain on Bills 7 and 8, please?

1630

**Mr Carr:** I will have to change my question now. Mr Fram, I appreciate the fact that you are talking in the overall context, the interrelated aspects, but there is a lot of public participation in the other bills—they are very complicated. Would it not have been easier from the public standpoint to have bills like 7 and 8? As I look at it, notwithstanding what you just said, from the public standpoint I think it is very difficult to understand. Could there not be some type of compromise between what you just said and trying to keep it as simple as possible?

For example, I appreciate what Mr Sterling said about the living wills, not wanting to get lawyers involved and keeping it simple enough that a lay person could do it. Is there not something that could be said for trying to make it as simple as possible and as easy to understand for the general public?

**Mr Fram:** There is a lot to be said for it. It is difficult to do. The most important thing, however, with legislation, as very few people read legislation—when was the last time you cuddled up with your Income Tax Act? What people deal with, and that is hard enough, are the forms we get sent, to our regret, early in each new year with our name on it and a direction to return them filled out.

What people will see of the legislation are powers of attorney forms, and I think those have to be carefully drafted. I do not think it will make any difference whether it is Bill 108 or Bill 8; the form will still be a straightforward, clear document, with instructions on how to fill it out. That, I think, is a matter of real importance.

**The Vice-Chair:** Are there any further comments or questions?

**Mrs Sullivan:** Could I ask, Mr Chairman, through the parliamentary assistant to the legal advisers for the Ministry of Health, if they have comment?

**Mr Wessenger:** I have no problem with that, if I could just ask with respect to what question.

**Mrs Sullivan:** Basically following on the same question, whether Bills 7 and 8 could readily integrate into those bills, the names of which we are not supposed to mention, but Bill 109 in particular.

**Ms Bentivegna:** The principles are the same in that there are advance directives set out. What it does, though, that is not in Bill 8 is that it puts the obligation on the

substitute decision-maker to follow those advance directives; that is the very first thing they have to look at in making a decision on behalf of an incapable person. It sets out the fact that it only comes into force when the person is determined incapable, so it has those additional rules, and then it tells the health practitioner he or she has to abide by that decision of the substitute decision-maker, who is following advance directives.

It adds in all the other pieces so that everybody knows what they are supposed to do in the situation where there is an advance directive, and it allows for whether the power of attorney has been validated or not. This idea, whether it has been registered or not, kicks in; even if the attorney who is named cannot act, the directives still have to be followed. That is very clearly set out in section 14 of Bill 109.

**Mrs Sullivan:** Thank you.

**The Vice-Chair:** Are there any further comments or questions? Seeing none, we now stand adjourned until the call of the Chair.

The committee adjourned at 1635.



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## Journal des débats (Hansard)

Monday 10 February 1992

Le lundi 10 février 1992

## Standing committee on administration of justice

## Comité permanent de l'administration de la justice

Advocacy Act, 1991,  
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et les projets de loi  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 10 February 1992

The committee met at 1014 in committee room 1.

### SUBCOMMITTEE REPORT

**The Chair:** We have a report by the subcommittee.

"The subcommittee met Monday 16 December 1991 pursuant to standing order 123 to consider a report to the committee on the following matter designated by Mr Harnick:

"Recognizing that Ontario is faced with rising crime rates, especially violent crime, the citizens of Ontario need decisive action from the government of Ontario in order to address this growing crisis. Therefore, as a first step, the Ontario Legislature should, through the administration of justice committee, call witnesses forward to present their views on the impact of the spiralling crime rates on society and determine how this crisis can be appropriately addressed by the government and make recommendations based upon the evidence presented to the committee.

"This issue is to be considered for a period of 12 hours.

"The list of witnesses will be determined by the subcommittee.

"The subcommittee met on Monday 16 December 1991 pursuant to standing order 123 to consider a report to the committee on the following matter designated by Mr Sorbara:

"The decision by the Treasurer, Deputy Treasurer, Minister of the Environment, the Deputy Minister of the Environment and the executive council of Ontario to ask the Ontario Provincial Police to investigate matters of Ontario's public service and members of provincial Parliament regarding the release of government information to those same members of provincial Parliament.

"The following list of witnesses is to be invited by the clerk of the committee to appear before public hearings:

"Honourable Ruth Grier, Minister of the Environment;

"Gary Posen, Deputy Minister of the Environment;

"Honourable Floyd Laughren, Treasurer of Ontario;

"Bryan Davies, Deputy Treasurer of Ontario;

"Honourable Allan Pilkey, Solicitor General;

"Donald Obonsawin, Deputy Solicitor General;

"Thomas O'Grady, Commissioner of the OPP;

"Jim Szarka, Deputy Commissioner, Services;

"Staff Sergeant L. H. Acres, OPP resources development."

This will be deemed as adopted.

"Your subcommittee also recommended that the 1990 standing order 123 designations by the Liberal and New Democratic Parties be withdrawn."

We will need unanimous consent for this.

For these meetings, we will be following the pink schedule now. I think everybody has one at his or her desk. Just so everybody knows, we will be following the pink schedule and will be receiving an update next week.

### ADVOCACY ACT, 1991, AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Resuming consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

**The Chair:** We will now go to the beginning of the public hearings on Bill 7, the Powers of Attorney Amendment Act, 1990; Bill 8, the Natural Death Act, 1990; Bill 74, the Advocacy Act, 1991; Bill 108, the Substitute Decisions Act, 1991; Bill 109, Consent to Treatment Act, 1991, and Bill 110, the Consent and Capacity Statute Law Amendment Act, 1991.

The first thing we have to deal with is that when we are going through these bills right now we will be using the old bills. We will not be using the reprinted ones until we get to the clause-by-clause, and then we will use the reprinted ones.

Today we have Gary Malkowski, the parliamentary assistant to the Minister of Citizenship. Please proceed.

**Mr Malkowski:** I am certainly pleased to have the opportunity to speak with you this morning. With me today are Gilbert Sharpe, legal director for the Ministry of Health; Stephen Fram, legal counsel from the Ministry of the Attorney General, and Trudy Spinks, legal counsel from the Ministry of Citizenship. Following my statement, Mr Sharpe, Mr Fram and Ms Spinks will be providing you with a detailed briefing outlining each of the areas where the bills interconnect. They will also be available to answer any questions you might have.

The Minister of Citizenship, the Minister of Health and the Attorney General have described in their statements to this committee the purpose and scope of each of the bills before us. Today, as lead parliamentary assistant to this legislative package, I will try to identify the consistent principles that run through the bills. We will highlight the

important connections and illustrate how these bills operate as checks and balances to one another, but before I do this I would just like to reiterate and emphasize the significance of this legislative package.

The Minister of Citizenship, Elaine Ziemba, stated before, "Our government will be judged by how we treat the most vulnerable members in our society." This government is delivering on this commitment to ensure that the autonomy, rights and dignity of all citizens, and particularly those of us who are most vulnerable, are enhanced and respected.

Vulnerable people, those of us who experience difficulty expressing our wishes or knowing our rights because of a disability or infirmity, are especially vulnerable to abuse, neglect and exploitation.

1020

The Advocacy Act, as the cornerstone of this legislative package, provides the key principles that underline and underpin these linkages.

I will now lay out the principles and go into presenting the connections under each principle: (1) the promotion of respect for the rights, autonomy and dignity of all persons; (2) the assurance of due process where the freedom to control one's own life and body is at risk; (3) the recognition of the importance of the family ties, and (4) the protection of the most vulnerable from abuse, neglect and exploitation.

The paramount principle underlying these bills is that of the autonomy. This principle represents the foundation of the Advocacy Act, which is the centrepiece of this initiative. Through a commission appointed by and comprised of vulnerable adults, the Advocacy Act will promote respect for the rights, autonomy and dignity of vulnerable people. A key purpose of this act is to empower vulnerable persons in our society by enhancing their ability to make their own choices and obtain the support needed to remain in control of their own lives. Vulnerable people are frequently frustrated and disempowered by the failure of social, legal and institutional systems to hear their concerns and respect their choices. They are especially vulnerable to abuse, neglect and exploitation. Advocates who are independent, free from conflict of interest and who have the necessary experience and training will assist vulnerable people in the exercise of their autonomy.

The support that advocacy provides represents an important check against inappropriate or unnecessary guardianship. The procedures and principles governing the appointment and conduct of guardians is covered by the companion legislation, the Substitute Decisions Act.

This theme of autonomy is further reflected in the Substitute Decisions Act, which introduces the concept of the power of attorney for personal care. Through this device, all of us will now be able to decide, while we are still capable, who will make the most critical decisions for us if we become incapacitated.

Sometimes these decisions will involve medical treatment. The Consent to Treatment Act respects the wishes of individuals by ensuring that the person with power of attorney for personal care takes precedence over the claims of anyone else to make medical decisions when we are unable to do so ourselves.

The Substitute Decisions Act also breaks new ground by allowing us to make advance directives about our medical treatment. The consent legislation ensures that these advance directives are respected.

The second principle which is enshrined in the Charter of Rights and Freedoms and embodied in all three acts is that of due process. The freedom to control one's own life and body is precious and should not be removed except through a process that is scrupulously fair and that can be tested. Both the Substitute Decisions Act and the Consent to Treatment Act ensure that the assessments of capacity will now only be made with reference to appropriate definitions and in accordance with prescribed criteria. Every person who is assessed as incapable under either of these acts will have a right of review. Advocates who are responsible to an independent Advocacy Commission and therefore free of conflict of interest will provide the information necessary to make that right meaningful.

It is specifically in this area of rights advice that the Advocacy Act interconnects with the other two acts. Both the Substitute Decisions Act and the Consent to Treatment Act say very clearly what the advocate can do when he or she meets with a person who is alleged to be incapable. The function is limited to explaining what the finding of incapacity means and advising of the right to challenge it. If the individual wishes to contest the finding, the advocate will help him or her make the application for review and/or obtain legal services.

I want to emphasize that this role does not extend to giving medical advice or advising a person whether he or she should contest the finding. It is a very straightforward, uncomplicated function. I might add that psychiatric patients have had the benefit of rights advisers for quite some years and the process works very effectively.

A third theme running through the acts is the recognition of the importance of family ties. Close relatives and partners are given priority in respect of guardianship appointments and will also usually be the substitute decision-makers under the Consent to Treatment Act. The Advocacy Act recognizes the valuable role that supportive families provide by including as one of its purposes the encouragement and enhancement of family support for vulnerable persons.

Yet another common principle is that each of the acts, in its own way, provides a safety net for those of us who do not have family or friends to care for us.

Advocates will be able to provide support and assistance to vulnerable adults who have no one else to help them. The Substitute Decisions Act and the consent legislation both provide that the public guardian and trustee will assume responsibility for people who are mentally incapable where there is no one else able and willing to act as guardian or substitute decision-maker.

Finally, the acts all play a significant and complementary role in enhancing the protection of the most vulnerable among us who are at serious risk of abuse, neglect or exploitation.

The Advocacy Act provides that advocates will have powers of entry and access to records to ensure that they can intervene effectively on behalf of vulnerable adults



who are at risk. In addition, the act ensures that an independent body exists to identify and seek the correction of systemic problems relating to policies, procedures and laws which lead to abuse and neglect of vulnerable adults. The Advocacy Commission will act as a check against the power of public institutions and authorities, including the office of the public guardian.

In turn, the public guardian will be the watchdog for financial exploitation, physical abuse and neglect of mentally incapable people. It will be required to investigate allegations of serious harm. It will be able to force guardians and attorneys to account.

The public guardian will also protect the integrity of advocates who cannot act as substitute decision-makers by acting as the guardian of last resort where decisions must be made and the individual is not capable of making a decision even with the support of the advocate.

Ladies and gentlemen, members of the committee, I hope I have been of assistance in summarizing for you the distinct but interdependent roles these bills will play in the lives of those of us who are vulnerable or incapable.

You have heard the question raised here: Why do we need three separate acts? There are very compelling and cogent answers to this question. Most important, in order for advocates, guardians and service providers to act as effective checks and balances for one another as described earlier, they must be accountable to separate programs and responsible to separate ministries. Advocates in particular must be independent and entirely free from any conflict if they are to be truly effective in advancing the interests of vulnerable people, on an individual as well as on a systemic basis.

I recognize that the subject matter these bills deal with is complex. The issues they address are sensitive and profound. Respect for autonomy, rights and dignity are the fundamental principles underlying the Advocacy Act, which I am pleased to represent on my minister's behalf. All three bills are interrelated based on these principles.

**The Chair:** Thank you, Mr Malkowski. Would you like to do the questioning now or wait until we have the briefing? We will do all the briefings.

1030

**Mr Sterling:** Thank you very much, Mr Malkowski. I appreciate your comments. I would like to raise a preliminary point.

Before we begin these hearings, I have had, as I am sure many members of this committee have had, approaches by various interested groups. I am disturbed to find that most of these groups have the impression that there are amendments which have already been determined by the government which are going to alter this legislation. I would like the ministries to come clean and present those amendments now so that groups that are going to make presentations over the next coming weeks will do so in full knowledge of what the government's agenda is. I do not think there is any sense in us hearing groups complain about section 23, section 48 or whatever if in fact it has been determined by the government that these sections are faulty and that there should be some amendment to them.

**The Chair:** The clerk has advised me that she has contacted the various ministries and they have informed her that there are no amendments forthcoming yet.

**Mr Malkowski:** I would like to answer right at this point that no amendments are ready. We are certainly here to listen to the concerns of people, and we have a very open agenda in this matter. Certainly there may be a time when we will consider changes, but that is after we have listened to the witnesses in the next few weeks.

**Mr Poirier:** On a point of clarification: The wording I have heard my honourable friend the parliamentary assistant use is, "No amendments are ready." Does that mean there are some that are not ready coming or that there are no amendments planned? That makes a big difference.

**Mr Curling:** Sounds like they are working on something.

**Mr Poirier:** They could be working on something, or are they not working on something or what can we expect? With Easter coming, are we going to get some eggs or what?

**The Chair:** Mr Malkowski, for clarification.

**Mr Malkowski:** Again, what I am saying is that there are no amendments planned at this point. We are here with an open agenda to listen to people and find out where they feel there are needs for changes. There are no amendments in the planning stage at this point.

**Mr Poirier:** Fair enough. Thank you. A further question, if I may. If that is the case, fair enough. We heard that clearly. After consultation, after hearing the different groups come forward and after discussion in committee here, is the government open to amendments to what it will hear here in the next few weeks? I would like to hear that.

**Mr Malkowski:** After we have heard the presentations we will certainly be considering making any necessary amendments if that happens to be a need that we identify, but at this point we are not able to comment until we hear people speak.

**The Chair:** Thank you. I might remind you that it is not necessary to stand, if you so choose, Mr Malkowski.

**Mr Malkowski:** The problem is that the interpreter cannot see my hands because of the riser in front of me. I have to stand up so the interpreter can see me clearly and be able to see what I am saying.

**Mr Morrow:** Mr Chair, I was just going to say that in the normal public hearings we do we normally do amendments afterward if the presenters obviously make a just cause. We do have a lot of people presenting this morning, so can we move on?

**Mr Sterling:** I had hoped we would enter into these hearings on these bills because of their importance. I view them as probably some of the most important pieces of legislation the government has brought forward. I had hoped we would enter into these in a logical, non-partisan fashion. It is possible. We always have to be partisan in this business, but I just find the parliamentary assistant's remarks contrary to what other groups are telling me on the telephone and in interviews: that there is a lot of winking and nodding going on with regard to this legislation and that in fact there have been suggestions and amendments

which are being put forward and I think would clear the decks and let us get to the issues which have not yet been resolved. I just say that it is regrettable that the government is taking this position at this time.

**The Chair:** Thank you, Mr Sterling. I might remind you that we do not work on speculation or hearsay. I am sure that if the ministries have something forthcoming they will present it in a timely fashion. Now we could proceed with the briefings from legal counsel. Could you please introduce yourself and then proceed.

**Mr Sharpe:** Gilbert Sharpe. On my right, Trudy Spinks. On my left, Steve Fram. I believe we have—well, I have been before you before, in December. It is a pleasure to come back.

**Mr Poirier:** You are an institution.

**Mr Sharpe:** I do not know if that is good or bad.

Interjection.

**Mr Sharpe:** Thank you. I should say at the outset that we are all here to help in any way we can, and while I am going to try to lead you through some of the interconnections of the bills, of course I am not going to presume to know bills other than 109 as intimately as my colleagues, so I am sure we will all be participating.

On the question Mr Sterling raised about amendments, I know that the Minister of Health, when she appeared before this committee, did flag a number of areas of concern that had already been raised to our ministry and did indicate some sympathy to those concerns and a direction we could go in, depending on the fuller presentations that appear formally before this committee. So I know that there have been some issues as to areas in 109 that could be improved that have been flagged by the minister. I would anticipate that, based on the presentations we are all going to be monitoring carefully over the few weeks, we hopefully will develop amendments according to the need that arises at the time and as we go.

I am assuming that through the clerk everyone has a binder of material summarizing the interconnections and a five-page memo.

**The Chair:** For the clarification of the committee, it is this yellow binder.

**Mr Sharpe:** Yes, that is right.

Interjection.

**Mr Sharpe:** We turn it sideways. It is not quite as offensive.

I would like to give credit where it is due. Brenda Pearce, who is an articling student with our legal branch, prepared this material, and I know she is in the public gallery and deserves the credit for having put this together, with the assistance of one of our counsel, Giuseppa Bentivegna. Giuseppa put together the five-page summary of the interconnections. While we are going through this, Trudy put together the charts that appear in the material itself.

Perhaps I could start by summarizing a bit of what I said in December, the notion of why we have ended up with separate bills and where a lot of this came from.

I can remember back into the 1970s when, prior to the Powers of Attorney Act first appearing, the tradition of a

power of attorney for lawyers would be that if we were going out of town for six months, we might leave control over our bank accounts, assets and business to a friend or business associate by executing a power of attorney, and of course if we subsequently became incompetent, that power of attorney would at common law be null and void. The Powers of Attorney Act was first developed in the late 1970s with the notion of permitting those powers so given to survive subsequent incapacity if the person executing them contemplated that in making out the power of attorney. I can recall into the late 1970s working with groups like the Alzheimer society that wanted the power of attorney to survive subsequent admission to a psychiatric facility, where usually, following an incapacity finding, the public trustee would take over, and amendments were made at the time to the Mental Health Act and the Powers of Attorney Act to do that. It is true that was all on the estate side, but the notion historically was that a person should be able to indicate in advance who would have control of his assets should he become incapable and that that control should survive any, normally, formal findings under vehicles like the Mental Health Act.

#### 1040

There have of course been discussions for many years—I am thinking now particularly of Mr Sterling's bills 7 and 8—of concepts of living wills or the advance directive notion on the personal side. Through the 1970s and early 1980s we received in the Ministry of Health many questions about: "Could I make out a similar document indicating what would happen to me? I may not want to go into a particular nursing home or not want a particular kind of treatment." The answer of course was that there was no legislative vehicle to do that. They could always express their wishes in writing, bring them to the attention of people close to them, health care providers and others, and hope that they would ultimately be relied on if indeed they subsequently became incapacitated.

During this time there is a development in the States of common-law cases—Quinlan, Saikowitz and others—trying before the courts to determine whether the person would have wanted to be retained on life support, calling evidence as to statements they might have made ahead of time and things of that sort. Of course, at that time in the States, natural death legislation was developing like our Powers of Attorney Act to recognize a legal process where people could reflect those desires.

The only other legislation we really had to look at the personal side of things was the Mental Incompetency Act. It, as you know, was rarely used on the personal side of things. It took a long time, it was expensive and it was an all-or-nothing approach. If you became incapacitated and you were found incapable to look after your person, you lost all rights over everything. Some of us may remember the Justin Clark decision and the issues surrounding that. The act was used usually if grandma had millions of dollars and was, in the view of her family—potential people who might inherit—frittering it away and wanted to grab control over it.

So in that climate various committees were developed. Steve, as you know, chaired one of them through the 1980s



to look to coming to some way of bringing forward legislation that would codify and create rights in all of these areas. In doing so, there was a big issue for me in terms of the health form, because one of the issues as we were going always related to the question of why you would consider substitute decisions for health care different than substitute decisions generally. Why not have it all under the new streamlined guardianship legislation? We could have a very simple streamlined procedure that hopefully would not create too great a delay in health care settings like hospitals.

The only answer I can give on that would be the history of statutes like the Public Hospitals Act and the Mental Health Act that traditionally had recognized the ability of family, next of kin, to make decisions on behalf of their relatives who became incapacitated, either temporarily or permanently, and the need often to move swiftly in health care settings, particularly hospitals, to be able to get on with treatment on the presumption that we have the best interests of our loved ones in mind. It may not always be the decision that they might have made if competent; however, that is the way health laws had reflected the notion of substitute decision-making—a speedy means of having family make choices for their loved ones.

Now, having said that, unfortunately we did not have substitute laws for health care in places like nursing homes, homes for the aged and for the developmentally handicapped. So although practically they relied on family consent, they were doing so without legal authority behind them. There are a number of reasons why in Bill 109 I think we wanted to have it encapsulated as a complete code to guide health-care professionals.

Particularly during the proceedings of Steve's committee, there were many concerns raised about how easy it might be to have a doctor say someone was not competent if that person was not agreeing with the treatment, and then take the family's consent and proceed to force something on him that he might not want, and how important it was that, if we were going to retain that model, particularly with regulated health professions now where many health care professionals are going to be in a position of making these decisions on capacity and removing a person's rights to make his own decisions, we set up some protective mechanisms, even where we were moving into procedures under Bill 108 that could ultimately end up in a court's review in the formal appointment of guardians.

It was considered important, again, to have some external mechanism to tell people who are in that potential jeopardy, in their view losing control over an aspect of their lives, that they had the ability to challenge that, and the challenge mechanisms would become more formalized should they desire to question the finding that they are not capable. This exists as well for Bill 108 in validating powers of attorney for personal care, even where the person may have chosen the assessors who down the road make the decision and submit the forms to the public guardian and trustee. This is where ultimately Father Sean O'Sullivan's report was very helpful. The notion was that we would have people from the new Advocacy Commission come in at important junctures in our various statutes to explain rights to people.

It is not really seen as a formal advocacy function in the sense that the person would then be spending a lot of time with the incompetent individual attempting to challenge decisions and assert rights on an ongoing basis. Rather, this would simply serve as an initial mechanism whereby someone attempts to communicate to the individual who is possibly incompetent to let them know that this decision is being made and that if they want, they can challenge it. The person will perhaps take the extra step of helping them find a lawyer should they want to bring that challenge forward. But it was never anticipated that this function would be one of pure advocacy as such. In my view, "rights adviser" is probably the better concept for that role. That is the backdrop of how we have gotten to where we are.

We could postulate a case of the so-called reasonable person trying to go through the system, someone who discovers he has Alzheimer's disease, for example, but who in the interim is lucid and competent. He knows with some certainty where the disease is going to take him and he would like to try to ensure that ultimately down the road his wishes will be respected when he truly becomes incapacitated. It may be that he will choose not to go to a particular kind of psychiatric facility or to have certain types of drugs used. It may ultimately be that if his illness results in some terminal condition he would want to choose that extraordinary means not be used to keep him going on life support systems.

In this legislation we are hoping there is a formalized mechanism, and a less formal mechanism as well, to accomplish that. Under Bill 108, individuals could execute a power of attorney for personal care and, with some specifics, designate an individual to act on their behalf and try to guide their decision-making in, for example, the health care arena by being very specific. They can also choose the people whom they want ultimately to conduct the assessments. The assessors will ultimately be developed by regulation into classes. There will be training programs and so on so that they they could not choose just anyone; they would have to be from among those classes. Down the road when, in the view of the assessors, they become incapacitated, there is a formal procedure for validating the power of attorney without having to take formal court proceedings.

Bill 109, the consent legislation, recognizes throughout the bill—and there are a number of sections which I will give to you for your own reference. They are subsection 7(2), section 12 and subsections 22(8) and 26(6). Those sections provide mechanisms for holding in abeyance the normal procedure under Bill 109 for ensuring protection where it is thought that a person either is now incompetent and an advocate would visit—which is the section 10 triggering mechanism—or, in the other sections, where a health care professional would normally be entitled to conduct a new assessment and decide that the person has now become competent. That type of thing cannot happen if they either have a guardian under Bill 108 or if there is a validated power of attorney for personal care, because the protections in determining their incapacity have already been afforded in Bill 108 with the advocate's visit, discussions, appeal and review mechanisms and so on.



1050

What we have ultimately in Bill 109, as you know, is an hierarchical structure of substitute decision-making where, in the usual course, the health professional decides the person is not competent to consent to that specific kind of treatment being offered. In that situation, the advocate would normally, under section 10 of Bill 109, come in and talk to the person. There would be the usual rights advice where the professional would tell the person, "You've been found incompetent; you have the right to go to a board," and so on, but there is also notification to the advocate.

I think it is under section 7 of Bill 74 where the advocacy legislation requires that where another act requires advocacy services, they must be provided. So the advocate then would come in and explain to the patient that he or she has been determined to be incapacitated to consent to treatment by the health professional responsible for his care. It does not necessarily have to be a physician. The Regulated Health Professions Act—and we are working on a new Public Hospitals Act—may well contemplate midwives, psychologists and other health professionals having independent admitting rights, privileges, treatment rights and so on. Any of these individuals could make that finding. The person is told by the advocate, who is wearing his rights advice hat, that he could challenge that if he wants to.

In December I explained how under the Mental Health Act we had monitored the number of people told that they could challenge the finding of incompetency who actually do—and it is not a high percentage—but the individual might say, "Yes, I'm not pleased with that right being removed at this time." We can think particularly of a schizophrenic who has gone off his medication and who perhaps lacks insight and so on who now comes to that decision. If he wishes it, the advocate could then help him to have access to legal aid, to counsel, to challenge the determination initially before a review board and ultimately on appeal from there to court if he so desires.

As I say, none of that would be relevant if the person had already under Bill 108 had a guardian appointed or a validated power of attorney. To take the routine case, the individual had made out the power of attorney for personal care, had appointed someone. He has Alzheimer's, he is going downhill, he now needs hospitalization. The power of attorney for personal care—the assessors are triggered. They apply to the public guardian and trustee for validation; the validation takes place; there is no challenge. He is now in hospital, signed in on the authority of his substitute decision-maker, whom he himself has chosen under the power of attorney. He is now in hospital. Treatment is proposed. That person would be the highest-ranking. There being no formal guardian appointed by court, the next level down would be the individual he has chosen, who would then make judgments about treatment for him, following his wishes if his wishes are applicable to the particular treatment choices being offered at the time.

Where it becomes a bit complex might be a situation where evidence is available that the patient changed his mind about the care he wanted. He did not get around to letting anyone know in a formal way to change his power

of attorney for personal care. The question for the health care team now is, "To whom does one listen?"

If there is solid evidence that he did in fact change his mind, and one can always seek direction on this, but if there is evidence that clearly indicates there are more current wishes, they may be in the form of an advance directive completed under Bill 109. There is a provision that deals with the ability for us to designate a form that could be used on a voluntary basis. It would not necessarily preclude forms developed by groups such as Dying with Dignity, but an individual may have completed an advance directive. A Jehovah's Witness, for example, may have completed a form similar to the Malette and Shulman situation, or he may have told someone he relies on: "I made this thing out some years ago and I should get around to changing it, but I don't feel that way now. With this kind of treatment that's now facing me and is imminent, I really want something different done."

More current wishes under Bill 109 would override the earlier instructions set out in a power of attorney. Those wishes would now be the ones that govern, although the individual making the decision would remain the attorney under the validated power of attorney for personal care. He would be the substitute decision-maker. He would now be bound to follow the more current wishes the individual expressed. The thread running through Bill 109 is that just because we completed a formal document at some point in the past, that should not necessarily preclude our ability to change our mind later on.

Very briefly, that is the thread of a possible scenario of how someone could use all three acts in, I hope, a coherent manner.

I would be happy, if you like, to run through briefly the sections in the material you have, just to indicate what is here for the purpose of your review when the presentations come during the public hearing phase of the committee. What we are trying to do with this of course is, on an issue-by-issue basis, to bring all the material together on one page so you do not have to jump from bill to bill looking for different provisions.

The first section deals with the relationship between the consent act and the Substitute Decisions Act and, in an encapsulated form, explains some of the interactions I have just described.

The next section deals with the relationship between advocacy and substitute decisions.

In the next section we have set out the contents of each act, taken of course from the descriptions at the beginning of the acts, basically the index of the acts, so they are all in front of you at once. Then perhaps you can flip to part 2 if you just want to very generally find the specific provision someone has raised during the hearings. Hopefully this will be a bit of a road-map so you do not have to open all three acts and search through all the indices.

The next part deals with the purpose of the acts. You have heard a fair bit of discussion about that already.

The next, of course, is the application of the legislation. It is interesting to note that Bill 108 is aimed at persons 16 and older, whereas, as you know, Bill 109 permits persons under 16 to give autonomous consent, this rebuttable presumption notion. Where a young person indicates a desire



to give a consent, then it does trigger the advocacy provisions under section 10 of our bill and section 7 of the Advocacy Act.

The next starts getting into issue-specific topics. Here we are looking at mental capacity. I think you will find the definitions fairly similar between the acts. We certainly attempted to gain consistency.

Flowing on from the definition, how one determines mental capacity is the next section. Continuing on in the determination of mental capacity, we look at personal care, and then at the bottom of that section, property.

The next section questions what the procedure is if the person is found to be mentally incapable. This is where Trudy's chart appears for the first time. She put together a description of how the Advocacy Act interrelates with the two.

**Mr J. Wilson:** This is the simplified version?

**Mr Sharpe:** Yes, she has the more complex version here if you would like to see it.

The next section deals again with the procedure, what happens if the person is found to be mentally incapable, and starts with Bill 109 and the Consent to Treatment Act and then on the next page Bill 108. We always start with Bill 109 because of course this was produced within the Ministry of Health, so rather than going logically in chronology—

**Mr Poirier:** As someone says, we always have to be partisan.

**Mr Sharpe:** In our own way. We try not to be, though. Then in part 7 we get into who can decide on behalf of an incapable person. This is where I talked a bit about the hierarchy. One, as you can see on the left side, is the guardian and two, the person appointed under the power of attorney; this is the person chosen. Then we get into the hierarchical structure of different relatives and partners and so on.

The principles governing the person making the substitute decision is part 8. This, in our bill, is section 13: instructions and wishes and more current wishes. Then in subsection 13(4) I indicated we might be designating a form for a kind of advance directive. That is the notion of the prescribed form that we talk about there. Bill 108 talks about the duty of guardians, section 63 and so on, and how one resolves inconsistencies.

Living wills are specifically addressed in part 9, advance directives and durable powers of attorney. Again it gets into the question of what overrides what and how people can make out forms and ultimately change their minds.

**Mr Sterling:** we did not integrate that section with bills 7 and 8.

1100

**Mr Sterling:** I noticed that.

**Mr Sharpe:** Living wills go on in Bill 109, the next page, and then we get into Bill 108 on the bottom of the next page.

Part 10 gets into the question of the role of the advocate and the role of Bill 74. Trudy's chart being such a good guide, we repeated it here again under the role of the advocate. In case you are wondering, it is not a new chart. The role of the advocate continues on to the next page, again following through bills 108 and 109 and all the junctures

where the advocate's visit is mandatory. It continues on. On the next page, again, the role of the advocate and substitute decisions and so on, and on the next page.

At the very back in the appendix what we decided we would throw in are all the provisions in the various bills that refer to one another so you could have it summarized as to where they interrelate. This is not necessarily a reference to, for example, section 10 of Bill 109, that the advocate shall visit, but a specific reference to one of the bills by name. That goes on over the next couple of pages, and that is it.

I would like to give my colleagues a chance to say something. I have been doing all the talking. Perhaps I could pause here and give them that opportunity.

**Mr Sterling:** If I could make a comment, I would like to congratulate your articling student on putting this together. There is a high degree of danger in doing this: We might understand what you are trying to do to us.

**Mr Sharpe:** We can always confuse things through our verbal discussions again.

**Ms Spinks:** I have a very short comment. I think both Mr Malkowski and Mr Sharpe made it very clear that what we call the rights advice function required for advocates under both bills is a very straightforward, uncomplicated function, and that we do not want to forget that although they are not related to the other bills the Advocacy Commission will be playing a much larger role in relation to systemic advocacy and the individual advocacy as well.

**Mr Fram:** I think there are a number of different ways you can come at the legislation. Gilbert has indicated how it will affect people, how it was originally conceived, the historic development of the legislation.

Another way of looking at this is to see the fields in which each of the pieces of major legislation is designed to operate. If you start with Bill 74—unlike the Ministry of Health which is big and powerful, the Ministry of the Attorney General prefers to go in numerical order—you can see that here is an attempt to build a means to address exploitation, abuse, neglect and coercion that affect vulnerable people. That is really, in the broader social context, a new kind of thing. Often we hear, especially those who are familiar with elder issues, that we ought to have exploitation, abuse and neglect legislation.

Ultimately that legislation, wherever it has been passed in the United States and Canada, says, "What you do is give somebody authority to go in and whip the people out and throw them into a hospital," and the stronger that legislation is, the fewer the services that jurisdiction provides. If you see really powerful exploitation, neglect and abuse legislation, you can be sure there are not any services for the vulnerable. It is easy and attractive for a jurisdiction to say: "We've done something about it. Hey, we've taken care of this. Look, we have this powerful legislation." So poor provinces like Nova Scotia have wonderfully powerful legislation and it results inevitably in old people ending up in nursing homes and hospitals because there is not any other choice. The services are not there.

If we look at the issue, the Advocacy Act is a different way of going about those kinds of things. It is a way of



approaching exploitation, abuse, neglect and coercion, by not giving the people who first interact with those who are alleged to be exploited, abused and neglected power over them. The only power talked about in the act is the power to visit them, power to see their records, primarily at their consent. But the action of advocacy, the visit, the ability to pose choices for someone who believed he had no choices, as a means of changing the situation as opposed to whipping them off and putting them in a nursing home or a hospital, is a major purpose behind the Advocacy Act.

It is hard when you talk about the Advocacy Act—because it does not say, “You go in and you march up and get an order and the next thing is, you may take the person and put him in a nursing home or a public hospital”—to sometimes get the vision of what it is that Father Sean O’Sullivan was concerned about or what my committee was concerned about when it talked about advocacy services and support in the community. To me, it is approaching these situations with that perspective we can see in Bill 74. It is a new way, a sensitive way, of attempting to approach the terrible problems vulnerable people may experience because they do not have power.

When you look at Bill 108—sorry, Gilbert, Bill 109 comes next—it is the means of providing a substitute decision-maker. Now, a substitute decision-maker is not something we ever hope to have for ourselves or our friends. A substitute decision-maker makes decisions that affect our lives or our property. Hopefully, few people will need to have a fully implemented substitute decision-making situation, but we know that with a society that is increasingly aging, with a bulge coming in the number of old people we will have and thanks to treatment facilities for the number of old people who will be surviving to an older age, we are going to have to address some things that are pretty unhappy. Bill 108 is an attempt to provide the means of addressing that situation when it comes up on an ongoing basis.

1110

We have our first choices, which are to choose ourselves. Who will be our substitute? We have powers of attorney for property and powers of attorney for personal care. Apart from details—the Canadian Bar Association will be talking to you about details it does not like and the property regime and other people may be mentioning details they do not like in something else—we will be listening and you will be listening and be our guide, because some of these choices or changes Norm was talking about earlier are not easy choices to make. Choices about whether to have validation or not validation are choices that you are going to have to listen to and evaluate.

It is not a sense of keeping things up our sleeve. If they were all that easy, we would not have had years of advisory committee work; there would not have been years that went into consent to treatment legislation. They are not easy. But you and not us have a better sense of where your community is and can bring together to bear on issues and possible amendments the wisdom of that community, what makes sense. That is what the ministers have said: There are some tough things here. There is not any magic in trying to decide one way or another.

It is not that we, having dealt with it, can say there is an overwhelmingly better answer to an age question or the question of whether there ought to be a certain different kind of power of attorney. We do not have that magic. We have an outline here, we have some very detailed provisions about what people do and do not do. By and large they will stay as they are, but there are still some critical decisions you will hear. We have been listening and we have been thinking, but in the ultimate analysis you will have to think and decide, because it is your bill.

You wonder why it is separate. We have all sorts of procedures in the legislation and we have all sorts of restrictions and directions to substitute decision-makers. Whether you have appointed them yourself or whether the court has appointed them for you, those are necessary. We have found that there are abuses in the existing system for powers of attorney for property.

Judith Wahl will be here this afternoon, I believe, from the Advocacy Centre for the Elderly. Judith was on my committee and has brought the problems that she sees in the real world in serving that community, and the public trustee has brought the office’s experience in addressing—so we have attempted to address what we know of the real world in these bills and yet make the bills still work for people.

But Bill 108 is all about a regime for actually having someone make decisions for you on an ongoing basis. It also has two very important provisions in it. It has section 27 and section 59. These two, like the Advocacy Act, address the issue of exploitation, abuse and neglect of people who are incapable, people whom the advocacy service cannot provide for, people who cannot make a decision to get out, whom all the explanation in the world will not protect from exploitation, abuse and neglect. These people are the subject of inquests. These are the people about whom public health authorities say, “Help us do something,” and sometimes medical officers of health rush in and do something and we do not hear about it, but what they do may not meet the test of legality.

Those provisions allow the public guardian and trustee in the most sensitive way possible that we could find to investigate allegations that somebody who is incapable is being exploited, neglected and abused and to act promptly to stop that situation by making decisions. They allow the court to make an appointment for temporary guardianship, whether it is over property or over the person. Those are decisions where power comes into the issue. Bill 108 is about power over somebody’s life.

As Gilbert said, you could imagine a system where everything went to court and guardians were appointed in medical situations where people could not make their own decisions, but there are many causes in the health care system which are temporary, which do not call for guardianship, which call for somebody to get you over your coma, get you past the decisions that have to be made while you are under an anaesthetic. These and many other kinds of decisions are about transitory incapacity or incapacity you may have that relates to a difficult operation, for example, where the risks and benefits are difficult and the procedures are difficult to understand. You can understand



the issues about whether you want a flu shot, but you do not know whether the hip replacement, on balance, should be chosen or not chosen, or whether the double or triple bypass should be taken or not taken in the circumstances. Those are the cases and the short-term issues which are dealt with by the substitute decision provisions in the Consent to Treatment Act.

We would overload the court system and there would be unnecessary applications if we did not have the Consent to Treatment Act. Alberta initially went to that process when it did its dependent adults legislation, but it did not have any treatment legislation. We found out that a great percentage of the guardianship applications were because they did not have consent-to-treatment legislation, and they could have avoided all those guardianship applications, or a good percentage of them, with consent-to-treatment legislation.

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Consent to treatment legislation is the short-term answer for transitory situations, for situations that are progressing or getting worse, for any number of situations—the psychiatric situation where you have changing states of awareness—without getting into the long-term guardianship or validated power of attorney legislation. The two fit together but they have audiences of people in different states of health.

We have then the two pieces of legislation directed at exploitation, abuse and neglect: one that does not make decisions for people, that helps to pose choices for people and that helps to get them to rescue themselves and see what their options are, as we never have had before, reaching out to people who are vulnerable, not with a fist, not with a desire to snatch and grab them and put them in an institution, but to find what they want and to give them choices; and the second for situations where there is no ability to make decisions, where the person being exploited, abused or neglected or who faces major life choices about his or her property or personal care cannot make the decisions for himself or herself and needs a substitute.

There are many people in our facilities in that state. Some people say: "What's it going to do to have guardianship? Aren't they okay now?" The answer is that we really do not know. We have had all sorts of people running facilities for children. We believed those facilities were being run properly and we are finding out now that all was not the way we thought it was. We have people inspecting nursing homes and homes for the aged, but they are inspecting standards. They are not dealing with people. We do not know what is happening with all those facilities from the point of view of the people receiving the services in the facilities. Many of those people are incapable of making their own decisions. We have found, wherever people have examined the situation, that the more people visit a facility as guardians or as advocates, the better the facility is.

The second piece of legislation is to provide a substitute, somebody who has an ongoing responsibility with respect to somebody who cannot make his or her own decisions.

The third piece of legislation has two thrusts. First of all, it addresses the issue of what is consent to treatment; what does a practitioner, whether a podiatrist or a physician,

have to do to get informed consent? It then says, if you cannot give this informed consent, who can give it for you.

There are three different but related pieces of legislation that tie together but have their own separate identity, their own separate reason for being, and I do not think they can exist effectively without one another. As I have said, we would be spending horrendous amounts of money for guardianship if we do not have consent to treatment legislation, and as Gilbert has pointed out, we need a rights advice component every time we are going to take away someone's rights.

Look at the process under the Mental Incompetency Act, a venerable old act some people would like to keep. A bunch of legal papers is served on a vulnerable person by a processor, and there are a few "hear ye's" and a few "commanded to appear before's," and there is a whole bunch of legal statements of what they are going to do. If I were 80 years old and I received one, I would put it on the shelf or use it to start a fire. But somebody is then going to go ahead with the hearing. Lawyers are going to show up, son of a gun, and somebody is going to make an order, and I really do not know what this is about. I do not know what they are doing to me. I just do not want to think about it. We do not want to think about many legal things.

Under this legislation, every time the state is giving somebody power to make a decision for you, at least the rights adviser comes out and says to you: "Here's what they're planning and here is who's planning it and here's what they could do. How do you feel about that?" You might feel, "Hey, I can't really make that decision, but who is applying? Harry? Harry never knew anything about me, never cared about me. I don't mind the application, but Harry? What happened to my daughter who always shows up? It's not so bad, I can trust her, but Harry? All he wants is my money."

To at least have a chance on a human basis to oppose the application, to get legal assistance if these people will not rearrange what they are planning for you. At each stage, this rights advice is critically important. It could be pulled out of the legislation and given to somebody else, but it ties together with advocacy, because if there is something more that you want, if there are other choices you could make—certainly no one is more vulnerable than someone who is having his rights removed—the broader advocacy issues may come into effect here.

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Every time somebody could lose his fundamental right to make decisions for himself, we have put in a human process. We may have to resort to the court system or pass by the court system, but we are not going to do it any longer with forms that frighten people, without the human content. That is critical to the approach that has been taken in all this legislation.

I think you have to look at each of these bills separately. You are going to have, for example, detailed issues to look at in Bill 108 about the nature of the standards, the decision-making, the validation process, the assessors. You are going to look at the Advocacy Act. Does it say enough? Does it say too much? Does it give us the right direction? Is it the

right composition? About consent to treatment, does it work? If not, what adjustments can be made to make it work?

These pieces of legislation are closely related yet remain separate fields of concern. I hope I have been helpful.

**The Chair:** Thank you, Mr Fram. Now we will allow about half an hour for questions from the committee members.

**Mr Poirier:** As Norman Sterling said, I appreciate this tool that is going to be most handy for us. Some accident may happen and then we may understand what all the interrelationships are.

Looking at all this, all of us will agree, no matter which side of the table we sit upon, that this is highly complex, no two ways about it. Even if we spend a long time studying this, it is still a lot of legalese in the sense that it will always remain something very complex.

Those people who are concerned, those people whom we aim to protect with this, those people whom we want to look upon as advocates and guardians and trustees, do you honestly feel they will be able to wade through this? Really, with time, even if we talk about this a year, two years or five years from now, this is most complex. I wish some of the people in the room, if they want, will come and have a look at this afterwards, just to give them an idea. This is very much of a summary of it all. This is obviously the ultimate Bible and document that will explain and decipher all of what is different and what is similar in all this. Thank God we have this, but this will not take care of everything. It is a going to be a handy tool for us to look into.

How do you honestly feel? Do you really feel people will be able to understand all that and make the subtle distinctions, the legal distinctions that may make a difference between how you advocate well or not as well? Give me your opinion.

**Mr Sharpe:** I can tell you what we are doing. We are writing, with communications people, material and booklets, preparing educational sessions that will explain the various dimensions of the bill, to those people who are going to be working with them.

The only example I guess I can give is what we did in 1978 when we made significant amendments to the Mental Health Act, which were very legalistic and very complex. At that time we identified the main people who were going to be working with the act—certainly patients and their families, physicians, health care facilities and the police—and we wrote separate communications booklets for each of those groups. For the police we produced A Police Guide to the Mental Health Act. We even went to the Ministry of the Solicitor General to use the same printer it used to produce the police manual, the black cover and everything. It was distributed over various chiefs' signatures and made part of the kits for all police officers in the province for a time in the late 1970s and early 1980s.

We wrote something called A Physician's Guide to the Mental Health Act, which was distributed by the ministry to all physicians along with material explaining their role at various stages and options.

We wrote a booklet which I think is still distributed—it has been updated several times—called Rights and

Responsibilities: A Guide to the Mental Health Act that was geared to patients and their families. It was given to patients when they came into facilities and it was made available through the Canadian Mental Health Association and generally anywhere that groups would gather to discuss issues relating to mental health. I remember taking great pains even in the 1970s to make sure the French translation was readily available, particularly in certain areas of the province. I was told hundreds of thousands of copies of that were disseminated.

At the same time, teams were put together of ministry, government people, outside physicians, lawyers and so on to wander around the province and have educational sessions, usually located in local hospitals or wherever there was a good arena or room to do that in. We worked a lot with the media, met with the editorial writers of newspapers and others to make sure they had an understanding so that if they decided to do stories they would at least be able to report from a factual base. That was all around one act.

I would hope, and I think it is the government's intention, to undertake a similar activity here. I think it is understood that there would be a period of delay from royal assent to proclamation in order to complete the training of assessors, the establishment of criteria for assessing capacity, the establishment of the Advocacy Commission and to make sure that everything was up and running properly, creating the office of the public guardian and trustee, hiring employees and so on. During that time, once we knew the final version of these bills, we would have an opportunity to complete the material to set up the educational forums and to make sure that we ended up with documents that were geared to the specific needs of the groups that are going to be using the legislation, or the patients or vulnerable individuals themselves.

**Ms Spinks:** I would just like to add, as someone who has worked fairly extensively with the existing legislation—the Mental Incompetency Act and those parts of the Mental Health Act governing the public trustee, powers of attorney, etc, and the common law—that what we have now is terribly fragmented and very convoluted and confused. I think that over time you will realize that this package provides a much clearer code. It may be more lengthy—it covers more areas—but in practice it will actually be a much more coherent scheme to work with.

**Mr Poirier:** Do you want to comment, Steve?

**Mr Fram:** I think that your question is excellent. I think that what has to be done, and what I see being done, for example on doing powers of attorney, is that the forms have to be done with explanation, that there have to be workshops where lawyers on a volunteer basis will sit down with interested seniors in every community and go over what these choices are. There have to be videotapes on what it is and how to do it. In terms of applications for guardianship they have to be done in the simplest possible form that will get them into the court system, but I think we can do a heck of a lot better than we ever have before in terms of documents that people can understand.

Kits have to be made up for people who are being the guardians of property, for example, with little account



books—how to keep accounts, what you put in there—the kinds of things to make it easy for people who use it to comply with the law. The fact is, the law right now is really complex, and on top of that, nobody pays any attention to it until somebody gets him into court. I think the idea behind this is to put all the law in one place and then make it easy for people to comply with it.

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**Mr Poirier:** Will the three of you be with us during the time the committee is going to sit? Will you be there full-time?

**Mr Sharpe:** I will not be. There are other hearings, Martel being one, and I am supposed to be running a branch of 60 people. But I will have Ministry of Health staff here at all times. Giuseppa Bentivegna, the lawyer I had mentioned, and Jutta Auksi, who has been working on this material and these issues for many years, will both be available throughout the hearings, and certainly I am very much looking forward to returning during clause-by-clause discussion.

**Mr Poirier:** Will you be here also, Trudy?

**Ms Spinks:** Yes.

**Mr Poirier:** I could go on for hours, but I will not.

**Mr Sharpe:** Please.

**Mr Poirier:** No, I think I want to give other members a chance in the short time we have, whatever happened to the clock.

One last point was that, with all due respect to my friend the parliamentary assistant, when I read the introductory statement and when I look at the support document you provide, one sounds very simple and the other looks to be extremely complex. Of course one will say this is an introductory document. It may be an introductory document, but this is very complex material, as we can attest. Will the parliamentary assistant be with us on a full-term basis also? I have raised a lot of questions out of this statement.

**Mr Malkowski:** Yes, I will be here.

**Mr Poirier:** Fair enough. The advocates who will support people who are vulnerable will, I presume, be registered and will be fully trained on an ongoing basis?

**Ms Spinks:** Yes, the advocates will be responsible to the commission. The commission is mandated under the Advocacy Act to ensure that they are properly supervised and trained.

**Mr Poirier:** And with time there will be a moment, I guess, in our presentation so that we can discuss the possible conflicts between family and advocates, where family would come first whereas the advocates may be more trained than family members.

**Ms Spinks:** I think it is very important to note out of Mr Fram's talk that he emphasized that the Substitute Decisions Act and the Consent to Treatment Act are about power over people. The Advocacy Act is not about power over people; it is about trying to give power to people, to maximize their power.

Some of the confusion around the conflict perhaps arises because people do not clearly understand that advocates are not substitute decision-makers. They have no authority to do so. They are not there to impose their beliefs and their own personal preferences on the individual. They are there to show them their options, enhance their ability to make their own choices, hopefully for them to resist abuse, neglect and exploitation for themselves, and also hopefully to resist unnecessary guardianship. That is one of the main focuses of the legislation. It is not about conflict.

I think that as the groups come forward to talk to you over the next few weeks, those who do advocacy, who have first-hand knowledge of these situations, will tell you that family members generally rely on advocates, find them a wonderful resource to use and find that problems can be solved where they have struggled and been frustrated for years. The conflictual element is minimal. Granted, that will take place from time to time. There will be situations where the choices that the individual makes and has a right to make in accordance with his or her autonomy do not concur with what the family member thinks is in that person's best interests. But what we are hearing is that those situations are not the norm, and of course if an issue of capacity to make one's own decision arises, then we have companion legislation that can deal with those situations. That is what it is there for.

**Mr Sterling:** All of the examples of the need for such what I guess I would call "draconian" power with regard to the Advocacy Commission are based on anecdotal evidence, as far as I can determine. Do the ministries have any statistical evidence of the widespread abuse that is being talked about here?

**Ms Spinks:** There are obvious examples we all know about. We hear about these issues.

**Mr Sterling:** Anecdotal?

**Ms Spinks:** They are factual. We have heard about Cedar Glen as a primary example. In terms of actual statistics, we have various figures on the vulnerable population. In terms of actual incidences of abuse, I will have to ask and perhaps get back to you. That is perhaps the best way to approach that.

**Mr Sterling:** In that the Advocacy Commission is partisan, because of the makeup of the commission, how then can you argue that it is not going to become adversarial?

**Ms Spinks:** You used the term "partisan." I think it is important to note that the commission is created by and comprised of people who are from the very groups this is designed to serve. The term "partisan" is only perhaps related to the fact that the advocate's function is to act as a spokesperson for the individual.

**Mr Sterling:** That was a word introduced into a conversation with an advocates group, it was not my word. They admitted that the commission is going to be a partisan body.

With regard to the other part of it, in your submission you indicate that advocates will not be making decisions. What happens when an incompetent person is not conscious? They told me that in those cases they expected an advocate to make the decision on behalf of the comatose patient.

**Ms Spinks:** No, at no time does the legislation ever give an advocate authority to make a decision. They may identify, for example, elements of systemic abuse within a system that affect vulnerable people, and perhaps that individual in particular, and need to be redressed, perhaps policies that are wrong or are not being followed correctly, or procedures or laws that are not being implemented. Those are issues an advocate can address in a general advocacy way in terms of systemic advocacy, but the advocate is always ultimately accountable to the individual vulnerable person.

In any case, they are not there to make a decision on their behalf. They may identify a situation where an assessment perhaps is required and guardianship is the appropriate way to protect that individual. I think Mr Fram went into that. When you get to the ultimate end of the continuum, then guardianship is a route to invoke decision-making authority, but that decision-making authority never rests with the advocate.

**Mr Sterling:** I was reading over some of the written submissions that have been made to the committee, and I refer to two submissions, 13 and 19. Submission 19 is from a schizophrenic patient who says:

"Primarily my concern is that I am aware that when my illness is acute I am too scared (paranoid) to subject myself for needed medical intervention. On the other hand, when I am well I realize that I need medical intervention should my condition relapse.

"I need the law to allow me to pre-determine how I will be treated. The laws must allow my healthy wishes to override the wishes I have when I am in relapse and psychotic and delusional."

I also read from a parent of a schizophrenic patient. He summarizes, writing about, I believe, his son, "As Dickens might have put it, 'If the law supposes that the insane are capable of supervising their own therapy, then the law is an ass.'"

How are we going to deal with this situation?

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**Mr Sharpe:** Under the legislation as drawn, that person, when well, could indicate his desire, either through a power of attorney for personal care, choosing someone he relies on, or, under Bill 109, through an advance directive, to indicate that should he become incapable he wants certain action to be taken, which might entail admission to a psychiatric facility and treatment.

This may be an issue the committee would want to discuss after the Friends of Schizophrenics have presented, but the way the legislation is now drafted, when that person becomes incapable—and of course they may question that—because they go off their medication, lack insight and may not be prepared to acknowledge that they are incapable at that point, but even if they were, their admission to a psychiatric facility could then only be undertaken on the basis of a guardianship order that specifically recognizes the question of admission to a psychiatric facility. That could delay admission and could present, in the view of some, some difficulties.

The question becomes, should some modification be made to the legislation empowering such an individual to

decide in advance that he be taken to a psychiatric facility and admitted, by force if necessary, without the need to go to court and obtain a specific guardianship order, or are we too concerned about treading, at that point, on the liberty of the individual too cavalierly if, down the road, the police must be used in order to acquiesce to that request, when under the consent act they can always change their mind later on?

Are they capable of changing their minds? Are they competent? Because in my view there is then a potential risk of circumventing the protections of the Mental Health Act and using a side-door approach to committal on the basis of presumed incompetence or someone's view that the person may be incapable without the strict criteria and procedures set out in the Mental Health Act.

**Mr Sterling:** Can a person exclude an advocate from representing his or her interests in the future? In other words, if I decide I do not ever want an advocate representing my interests, can I exclude that person?

**Mr Sharpe:** The way the act is drafted now, the answer would have to be no. The advocate's visit is triggered at the time someone is going to make a decision, either under 108 or 109, that their rights are going to be removed. At that point, they could refuse to see the advocate, but I do not think the way the acts are drafted it is now possible for them to do that in advance.

**Mr Fram:** I agree with you, Gilbert. Right now, when the advocate shows up or the rights adviser, they would have a right of audience. You could then tell them to leave, but it is not like the efforts to get rid of junk mail. You cannot put in something that says, "Do not deliver an advocate to me ever."

**Mr Sterling:** You see, the problem is, when I receive junk mail, I am usually sane and not confused. My concern is that if I make out a power of attorney dealing with my wishes and want my son or daughter or whatever, I do not want an advocate confusing me at a later point. I implicitly and explicitly trust my children to take care of me and make decisions for me. Why should the state be interfering with my family?

**Mr Fram:** It is an excellent question. If we look at the exact issue you talk about, you have now chosen somebody to make a decision for you. The question that arises is, "Yes, I chose someone, but not now." You chose someone believing he would act in absolute good faith, who would act when you became incapable. When you later come down the line, and in between you have won the lottery and you have made a liaison with a person who delights you, and all of a sudden your family is now believing that you have become incapable, but you are quite certain that you are not only sane but happy for the first time in many years, should your actions be the trap? I think those are tough kinds of questions. I do not have an answer to that.

**Mr Sterling:** Steve, you are exaggerating to the extreme in terms of your example.

**Mr J. Wilson:** Well, he going to win the lottery—

**Mr Sterling:** Maybe not the lottery.



I take great exception to this part of the legislation. You are talking about state intervention into the family situation, which is so abhorrent to me that I find it unbelievable that the legislation would be drafted in this way and would not allow a person to exclude the state from making these decisions.

**Mr Fram:** Norm, ask the same question of Judith Wahl, who sees what is out there in the seniors' community, that is all.

**Mr Curling:** I just want to make some observations, since I have been sitting on the committee for a short time. I ask all those who are drafting this bill and making amendments to take a couple of things into consideration. My observation is that it is almost a give and take. I want to take away some of the rights of people and I want to give them to some other people, and I presume that is what advocates and surrogates and all of those are about.

I ask them to keep in mind that in our population here in Ontario about 25% of the adults are functionally illiterate. As we talk about complexity, and my colleague talks about how complex this is to understand, and you said what we need are a lot of workshops—although I do not know who is going to attend those—and a lot of explanation and flyers that are going explain to those people. Carrying your analogy about the junk mail further, many of those who are functionally illiterate are throwing out junk and whatever is good at the same time. They have not been selective in that process.

I take it a bit further. We used the statistic of about 25%. We are saying that there is a greater number of people who are functionally illiterate in our society. That statistic did not include people in institutions, and we speak very much about the elderly and even people who are incarcerated whose reading capacity is even less than the statistics we are shown.

So I am saying to you that when we talk about advocates and appointments to all these people, I want to see how this mess is going to be passed on to them in a manner of understanding this sort of complexity. Furthermore, they have so much bureaucracy looking after them that they are utterly confused, whether they go to workers' compensation, human rights, or they go to race relations or they go to the Ombudsman. Here is another area itself.

The next point I would like to make is that in educating this diverse, multicultural society about all these loops that

overlap, the message must be given in a way that is understood in that community. So I am just putting your group on notice that my approach to the questions will be coming from that aspect of it and I hope it is taken into consideration.

**Mr Winninger:** I just wanted to come back briefly to Mr Sterling's point. He raises the spectre of state intrusion where the vulnerable person wishes to avoid any kind of advocacy. I wonder whether there might not be a great deal of danger in that, because if the vulnerable person is alleged to have signed a piece of paper saying, "I don't want any advocacy now or ever in the future," unless an advocate actually comes and talks to that vulnerable individual, how are we ever going to really know whether (a) that piece of paper was signed under duress, coercion or compulsion, undue influence, and (b) at the time that person signed that waiver, if you will, of advocacy, this person had the capacity to sign it? I really think you are getting into a Pandora's box when you say someone should be able to execute a permanent waiver, because that way there will never be any investigation, there will never be any review and all kinds of horrible abuse and exploitation can take place in the kind of scenario you raised.

**Ms Spinks:** If I could just add a point there, you have to remember that the rights advice that is taking place at the time that the power of attorney is validated is simply that rights advice. It is a very quick, short-term involvement and thereafter the attorney is free to carry on privately without any involvement, necessarily, with an advocate unless there was something inappropriate being done.

**Mr Sterling:** I guess they just view the world entirely differently than I do. I view abuse by a family as being a very ordinary kind of action and I take great exception when the state wants to step into a family situation where it need not be.

**The Chair:** On behalf of the committee I would like to thank Mr Malkowski, Ms Spinks, Mr Sharpe and Mr Fram for giving their presentations. I am sure we will be looking forward to further input as these hearings proceed.

Before we recess for lunch I would like to inform everybody that the heating system will be down for at least four hours, so if you want to bring jackets in this afternoon, go ahead. We stand recessed until 1:30.

The committee recessed at 1201.

## AFTERNOON SITTING

The committee resumed at 1337.

PETER SINGER

**The Chair:** I call this meeting back to order. I would like to call forward the first presenter, Dr Peter Singer. Good afternoon and welcome. Could you please present yourself for the record. We will allow you a half-hour for your presentation. If you could make it a little shorter and allow time for questions from each of the caucuses, it would be very much appreciated. Please proceed.

**Dr Singer:** My name is Peter Singer. I am the associate director of the Centre for Bioethics and an assistant professor of medicine at the University of Toronto. I obtained my medical degree from the University of Toronto in 1984 and my master of public health degree from Yale University in 1990. I am a fellow of the Royal College of Physicians and Surgeons of Canada and of the American College of Physicians. I practise internal medicine at the Toronto Hospital.

I appear before the committee to report on research I have conducted regarding the proposed legislation. As such, I wish to acknowledge my research support. The Centre for Bioethics is supported by a health-systems-linked research unit grant from the Ontario Ministry of Health, and I am supported by a medical scholarship from the Canadian Life and Health Insurance Association. However, the views I shall express are my own and do not represent the position of these sponsoring groups. Moreover, I do not represent the official position of my university, faculty, department or centre.

I shall focus specifically on certain sections of Bill 109, the Consent to Treatment Act, and section 47 relating to powers of attorney for personal care of Bill 108, the Substitute Decisions Act. I will not consider section 15 of Bill 109 or subsection 47(6) of Bill 108, which relate to research. These sections will be discussed by my colleagues from the University of Toronto who are scheduled to appear before this committee, including Dr Fred Lowy, Dr Eric Meslin, Professor Bernard Dickens and Dr Bill Tucker.

This presentation provides data from a public opinion poll of 1,000 Ontarians. The poll was carried out by telephone by Environics Research Group from September 5 to September 26, 1991. The random sample produces a sampling error of plus or minus 3.1% in 95 out of 100 samples. The principal limitations of this poll, as with all telephone opinion polls one reads about in the papers, for instance, is non-response bias. To clearly separate data from commentary, I have put the data in italics. I also wish to acknowledge the collaboration of Sujit Choudhry, an undergraduate student at McGill University, in this research.

My presentation will follow the order of sections in the legislation, beginning with Bill 109. Regarding the requirement for consent in section 4 of Bill 109, we asked Ontarians the following question, "Do you think a doctor should or should not give a patient all information about medical treatment, including benefits, risks and alternatives, before the patient decides whether to undergo treatment?" Ninety-seven per cent said the doctor should.

We also asked the following question, "Is it ever of benefit to a patient for a doctor to withhold information from the patient about treatment?" Twenty-five per cent answered yes to this questions.

We also asked, "If a patient's family asked a doctor to withhold information from the patient, should the doctor ever do so?" Thirty-three per cent of Ontarians answered yes to this question. This discrepancy between public opinion and the proposed legislation regarding the requirement for disclosure as part of consent suggests that either the legal standards should be reconsidered or public education is needed. With all empirical data of this type, one is always left with those two sorts of conclusions.

In terms of the age of capacity found in section 8 of Bill 109, we asked Ontarians the following question, "At what age do you think people should be allowed to visit doctors and receive treatment on their own without parental knowledge or consent?" The average answer was 16 years of age; 50% of the respondents gave answers between 16 and 18 years of age and 90% of the respondents gave answers between 12 and 19 years of age. These data suggest the age of 16 years for presumption of capacity is reasonable.

With regard to advocacy as required under section 10 of Bill 109—I am not referring to the Advocacy Act here—we asked Ontarians the following question, presenting them with this scenario, "Suppose a person became sick, and a doctor determined that he/she was not mentally capable of making a particular health care decision. In each of the following circumstances, do you think the law should or should not require an individual called an advocate to meet with the sick person to explain that he/she had lost the right to make that health care decision and that someone else would be making it for him/her?"

In the first situation, the first circumstance, "when the health care decision is a serious one, for example, whether to have heart surgery," 78% of Ontarians said the law should require advocacy. In the second situation, "when the health care decision is not a serious one, for example, whether to have a dental filling," only 33% of Ontarians believed the law should require advocacy as described in the scenario. In the third situation, "when the cost of providing the services of an advocate is paid by the government and therefore could cause your taxes or the provincial deficit to go up," 61% still agreed that advocacy should be required by the law.

Public attitudes towards advocacy were positive. However, when the decision changes from a serious one, such as heart surgery, to a less serious one, such as a dental filling, public support for advocacy is halved. These data suggest that the scope of the advocacy requirement might be reconsidered—scope in terms of treatments to which it applies. Unfortunately we did not assess whether practical problems in implementation of advocacy services, such as delay of treatment while awaiting the advocate's visit, would affect this public support.

Despite this apparent public support, I have reservations on theoretical grounds about advocacy as proposed under



section 10 of the Consent to Treatment Act. For reasons explored in the article which I have attached to this submission, I believe the need, effectiveness and cost-worthiness of advocacy services have not been conclusively established. As an alternative, I suggest that mandatory advocacy, as required by section 10 of the consent act, be evaluated on a trial basis in a few designated facilities. At the same time, advocacy services could be made available on request to all patients in Ontario. Moreover, I am concerned that the advocacy provisions of Bill 109 will protect against overtreatment but not against undertreatment of vulnerable persons, which in my anecdotal experience as a clinician is a more serious problem.

Regarding consent on an incapable person's behalf, which is found in sections 14 and 16 of Bill 109, we asked Ontarians the following two questions: "If you became unable to make medical decisions for yourself because you were in a coma, but you had left wishes to guide your medical treatment, how should others make these decisions for you? Should they follow the wishes you left"—the response given by 77%—"do what they think you really want"—the response given by 6%—"do what they think is best for you"—the response given by 16%—"don't know/no answer"—the response given by 1%.

Similarly, regarding who should be the substitute decision-maker, we asked, "If you became unable to make medical decisions for yourself because you were in a coma, which one of the following individuals would you want to make these decisions for you?" We gave a hierarchy very similar to that found in section 16 of the consent act, with one exception, as I will mention in a moment: your spouse or partner was the response given by 58%; your parent, 14%; your doctor, 10%, and that is the exception I will come back to; your child 16 or older, 7%; your brother or sister, 6%; a friend, 2%; another relative, 2%.

These data suggest that the hierarchical ranking of the principals for substitute decision-making in section 14 and the persons authorized to make substitute decisions, section 16, is reasonable. However, it is interesting that 16% of respondents prefer best interests and 6% prefer substituted judgement even when clear prior wishes are available. Moreover, 10% of respondents want their doctor to make treatment decisions for them. These respondents are requesting physician paternalism and rejecting patient autonomy. Thus, 10% to 20% of respondents disagree with the fundamental tenets of the legislation. Public education programs may be needed here.

Regarding emergency treatment of incapable persons, found in sections 22 and 23 of Bill 109, I am concerned that the definition of "emergency" in section 22 may not include most medical as opposed to surgical emergencies. For example, a patient with a myocardial infarction, heart attack, is not "likely to suffer serious bodily harm within twelve hours"—or even promptly—"if the treatment is not administered promptly." Such a patient is not likely to die within 12 hours, but the patient certainly may die. Thrombolytic therapy reduces the risk of death by about 3%, from about 12.8% to 10% on average. Would thrombolytic therapy for a myocardial infarction, widely hailed as the most significant medical advance in the treatment of coronary artery

disease in the past decade, count as an emergency treatment under the proposed Ontario legislation? I am not sure. Many emergency medical treatments provide similar margins of benefit. The definition of "emergency" should possibly be clarified to include such treatments if it does not do so now.

With regard to section 23 of the consent act, we provided respondents with the fact situation in *Malette v Shulman*, the case on which this section appears to be based. We gave them the following scenario: "Suppose an unconscious adult was brought into an emergency room following a car accident. A doctor determined that if the patient's life were to be saved, the patient would need a blood transfusion. However, the patient was carrying a card stating that blood transfusion was against his or her religious beliefs and that he or she would not want it under any circumstances. Efforts to contact family members had failed. Do you think the doctor should or should not give a blood transfusion?"

Some 48% of the public thought the doctor should and 45% thought the doctor should not. I believe public opinion is split on this issue because of uncertainty regarding what the patient would really want if faced with the actual choice of blood transfusion versus death. I have argued elsewhere, and attached that argument to this submission, that in the face of uncertainty about the wishes of an incompetent patient in an emergency, physicians may make two types of errors: providing unwanted treatment and withholding wanted treatment.

The latter error, in favour of death, we argued is more serious than the former error in favour of life. The critical clinical question, however, is how much information regarding the prior wishes of an incompetent patient is sufficient to support a decision to withhold a simple and possibly lifesaving treatment in an emergency. For example, it might be reasonable to forego life-sustaining treatment in an emergency on the strength of a power of attorney for personal care, as required by clause 23(a) of the consent act or on the strength or the request of a substitute decision-maker combined with written wishes from the patient. But perhaps it may not be reasonable to forego such treatment in an emergency on the strength of any written or oral wish, as required by clause 23(b). Therefore I suggest that either clause 23(b) should be deleted or "wish" should be more clearly defined.

### 1350

Regarding powers of attorney for personal care, and here I am referring to section 47 of Bill 108, we asked Ontarians the following series of questions: "Do you think that people should have the right to request the withholding or withdrawal of life-sustaining treatment?" In response 85% said yes, they should have the right. "Have you discussed with your family what life-sustaining treatment you would or would not want if you became unable to make decisions for yourself?" In response 36% said yes, they had had such advance discussions.

"A 'living will,'" we explained, "is a document you make to guide treatment decisions when you become unable to make these decisions for yourself. The 'living will' may specify who shall make decisions for you and/or what life-sustaining treatments you do or do not wish to receive.



Have you filled out a living will?" In response 12% of Ontarians said yes, they had.

Finally we asked, "Do you think a 'living will' should include just the name of the person appointed to make decisions for you, just the life-sustaining treatments which you do or do not wish to receive, or both?" In response 83% of respondents answered that such a living will should include both the who and the what.

These data highlight the gap between positive attitudes towards decisions to forgo life-sustaining treatment and actual advance discussions or directives. To bridge this gap, public education programs may be needed. The success of such public education programs can now be measured because our poll provides an estimate of the baseline prevalence of advance discussions and advance directives of living wills in Ontario, data I think were previously unavailable, as far as I am aware.

Also, because instruction and proxy directives are complementary, as described in another article attached, and because there is such strong public support for combined directives, regulations regarding the power of attorney for personal care, mentioned in subsection 47(8) of Bill 108, should prescribe a combined proxy-instruction directive form. Several other policy questions related to advance directives are also explored in the third article I have attached. Thank you for the opportunity to appear before you today. I look forward to your comments and questions.

**Mr Poirier:** Dr Singer, are the questions we have here the complete list of questions you put forward in your survey?

**Dr Singer:** It is not a complete list. There are about three or four questions I have omitted for purposes of time. These are certainly the most interesting ones.

Let me enumerate the ones I have not included so there is no question. I have left out a follow-up question to the question about, should a doctor withhold information if requested to do so? We also asked under what circumstances should this occur. Most people said things like—and now I am going from memory—when the patient cannot handle it, when it would hurt them, the sort of responses you might expect to ground a non-disclosure on the basis of therapeutic privilege.

We asked as well a question following up the Malette scenario where we said, "If a family member was now available and confirmed that the patient actually wanted this withholding of treatment, would you change your answer?" About half did, of the half who thought one way in the first place.

Finally we presented two other scenarios under the section 10 advocacy scenario, and those were really just methodological questions to check wording. We asked, "If it were a family member who required the services," the advocacy services, and we also asked, "If it were you who required the services"—remember the other one is in the third person, "a person" requires the services, and those results were not surprising: They were very similar to the third-person responses, about 60% to 70% support, as I recall.

As far as I can remember offhand, those are the only questions we asked that I have not included, but there

certainly are no explosive or sensitive issues I have not included. I really made those omissions for purposes of time.

**Mr Poirier:** There are a couple of points I wanted to make. On page 2, when you are talking about age of capacity, for example, I look at, "Average answer was 16 years" of age for "should be allowed to visit doctors and receive treatment on their own without parental knowledge or consent" and "50% of respondents answered between 16 and 18 years, 90%...between 12 and 19....These data suggest that the age of 16 years for presumption of capacity is reasonable," for that particular bill anyway, for Bill 109.

Obviously you, as medical doctors—maybe not you personally in your particular field, but surely there will be much younger than 16—well, not much younger. I do not have much of a margin there, but let's say 12 or 13 or 14 for some particular types of cases where a much younger person than 16 would want to see a medical doctor without consent from the family or parent.

**Dr Singer:** Yes.

**Mr Poirier:** Does that not cause you a problem?

**Dr Singer:** Let me address that this way: My understanding is that there is a presumption of capacity at 16 but it is rebuttable on both sides, so perhaps that rebuttal would handle the situation of a 12-year-old who was capable.

But I should really explain what I mean by "reasonable." What I mean by "reasonable" is that the normative basis of the legislation, which sets a cutoff at 16, is close to public opinion. That is all I mean. One may find it unreasonable on normative grounds to set that age. Really all I mean is that there is at least a concordance between what the legislation says and what people say if you ask them that question.

**Mr Poirier:** How about medical authorities in the population versus legal legislation and the people?

**Dr Singer:** Medical authorities versus law?

**Mr Poirier:** Not versus law, but versus what people perceive to be reasonable. I am not saying lawyers are not people, but then that is another story.

**Dr Singer:** In terms of the public, Ontarians in general, their average answer is 16. In terms of a group of lawyers or a group of physicians, I could not answer what their average answer would be because we did not do that survey. In terms of my own personal opinion as a clinician, I really should not offer it, because this is more related to those who practise paediatrics and possibly obstetrics and gynaecology. I am an internist, mostly dealing with adult patients, so I would leave that for others in terms of expert opinion.

**Mr Poirier:** That is why I said maybe it does not apply to you personally for what you are doing—

**Dr Singer:** Right.

**Mr Poirier:** —but you are not aware of groups of medical professionals coming together and discussing an age of preference, what they perceive to be reasonable, or age of consent and whatever? You are not aware of that type of discussion?

**Dr Singer:** I personally am not aware of such a discussion, although I would not be surprised if such a discussion occurred before the committee over the next month or so.



**Mr J. Wilson:** It is a very interesting survey you conducted. On page 3 you raise the thought that perhaps the scope of advocacy as envisioned in the acts is too broad. You do that in the way of distinguishing between a serious illness and a not-so-serious illness. Would you envision legislation that would essentially attempt to list which cases would be deemed serious and not serious? What are you thinking in that area?

**Dr Singer:** I think these data suggest that such distinctions, possibly in regulations, might be helpful, but that is only if you accept that what public opinion is is what you want to do. You really have to make a separate normative determination.

**Mr J. Wilson:** Why would we start now?

**Dr Singer:** Why would you start now?

**Mr J. Wilson:** I was only joking.

**Dr Singer:** I think public opinion can only make you reconsider the tenets of legislation. If the public disagrees with what you are doing, then that is cause for reconsideration, but it is not determinative that you must make a normative change.

**Mr J. Wilson:** As a clinician, though, you would not see it as unwieldy, as having to memorize lists of cases where an advocate would have to be called in?

**Dr Singer:** I think the benefits of such regulations, which restrict the scope of advocacy, would outweigh the burdens in terms of advocacy across the board. I am taking a good-faith effort on advocacy here. This is the part of the legislation, section 10, and I am now talking about the Consent to Treatment Act. Everything else in the legislation is very close to what doctors do or say we should do. Section 10 is completely new. I think that in principle it is a good idea, and as I walk around the wards I could see how advocacy services would help. I am concerned, though, about the way they are formulated here in section 10 in two regards. One is the very broad scope to which they apply in terms of the scope of treatments. Second, I do not think, as I argue in an attached article, that the need, effectiveness and cost-worthiness of such services is clearly established.

My response, my suggestion, is, let's start the program, evaluate it and make it available at the same time widely, but more study would be helpful before it were adopted broadly. But that is now moving away from the data; it is my own personal opinion and it is supported by arguments attached. I also think, as I say, that undertreatment is a more serious problem than overtreatment, and I am not sure that section—can I be specific?

**Mr J. Wilson:** Yes. Do you have a particular experience in mind?

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**Dr Singer:** I will make it a generic experience so as not to have any confidentiality problems.

For instance, a patient with a diagnosis of schizophrenia who is institutionalized in a mental hospital and who is non-verbal comes to the emergency room with chest pain. Perhaps an electrocardiogram and blood tests show that the person has had a heart attack. At times, such a patient

will have a more difficult time getting into a coronary care unit than other patients. In other words—this is based on anecdotal experience; I cannot actually say it is the truth, but it is my impression—that is an example of undertreatment, where we do not provide the services indicated for that problem as aggressively as we might. That is, I think, at least as serious a problem as overtreatment. It is not clear to me that section 10 will protect against that, and therefore a little more fine-tuning in terms of how the advocacy will be implemented may be warranted to optimize the situation for all parties working together in good faith.

**Mr Wessinger:** I was just looking at page 4 of your report where you suggest the definition of "emergency" should be clarified to include a broader scope. It has been suggested that a couple of changes could be made with respect to the definition of "emergency." One of those changes that has been suggested is deleting the 12-hour time frame, and also to provide treatment for severe pain. Do you believe those type of changes would be sufficient to clarify the situation with respect to the definition of "emergency"?

**Dr Singer:** I do not, actually. I think those are helpful steps forward in this section, but I do not believe those two amendments would address the problem of heart attack that I am presenting. It may well be that the current language of the emergency provisions would permit such a heart attack to be declared an emergency; I am just not sure. Given that I am not sure, I put it forth for perhaps a determination on that. The problem is this: It is not the promptness; it is not even the treatment of pain, although perhaps that would help on the heart attack side. The problem is that often something happens to people, like a heart attack or a blood clot in the lung, and we are trying to prevent that happening again. There may only be a 10% or 12% chance that it will happen again or get worse, and even the best treatment will only shave a few per cent off that 10%; in other words, an absolute risk-of-death lowering from, say, 13% to 10%, as in this case. It may well be that such a situation would count under the emergency provisions of the legislation. I am just not sure.

My problem is that if it is only a 13% chance of dying, it is not "likely" the person will suffer serious bodily harm; it is possible. The benefit is not like surgery on an appendix, where it is an all-or-nothing situation; it is just shaving a 3% margin off. But many medical treatments have that sort of margin.

Really, I am requesting clarification here more than anything else. It may be that the current language includes the situation. I think it is just a useful one to put forth for the committee to consider because coronary disease is a very serious threat to the health of people. It is a big killer.

**The Chair:** Dr Singer, on behalf of this committee I would like to thank you for appearing before the committee this afternoon.

CANADIAN BAR ASSOCIATION—ONTARIO

**The Chair:** Our next presenter is from the Canadian Bar Association—Ontario. Good afternoon. Could you please identify yourself for the record and then proceed.



**Mr Heighington:** Good afternoon. My name is Heighington. I am the treasurer and a member of the executive committee of the Canadian Bar Association—Ontario. If I may introduce the other members of the panel, all of my colleagues are members of the trusts and estates section of the Canadian Bar Association—Ontario and they have participated in the detailed analysis which is before the committee regarding Bills 108, 109 and 110. They will address you regarding the impact of these proposals on the public and the administration of justice.

Mr Barry Corbin is in the audience. He is the chair of our trusts and estates section. He spoke to this committee last May respecting Bills 7 and 8. There are two important aspects of Bills 108, 109 and 110 which affect the rights of persons who are unable to make their own decisions. Dona Campbell of the firm of Miller, Thomson will deal with the personal health care aspects, and Professor Ralph Scane of the University of Toronto law school will deal with the property aspects.

**Ms Campbell:** Good afternoon. We will be addressing what is found in our submission as part I, the personal care issues.

We are aware of the deficiencies in our current legislation dealing with substitute decision-making and acknowledge that the new legislation attempts to address these deficiencies, but we have very grave concerns about the new legislation. Put simply, it is our view that this proposed package is simply too cumbersome, too costly and far too intrusive, requiring unnecessary governmental scrutiny over surrogate decision-makers.

The difficulty is that concerns relating to care decisions in acute and terminal conditions are distinctly different from the important issues that should be considered regarding care decisions for psychiatric patients. In our view, however, Bills 108 and 109 are geared to the protection of the psychiatric patient population and are inappropriate in the context of most acute and terminal conditions.

You will see that part E of part I of our submission gives examples of different health care scenarios and demonstrates different issues in each context. It is our recommendation that different categories of health care should be dealt with differently.

I would like to address specific concerns with Bill 108. In order to implement the proposed vetting and policing of surrogate decision-makers contemplated in that bill, it will be necessary to completely reorganize and vastly expand the services of the office of the public trustee. A new level of bureaucracy will be created. In our view, the expense will be enormous. Is it necessary?

Essentially, our submission recommends limiting proposed governmental supervision. We recommend a legislative policy that is reactive, not proactive. Mechanisms could be put in place to quickly respond to perceived abuses. We acknowledge that the current response procedures should be more efficient than the current court application to remove a committee of the person.

It is our view that in the first instance an individual's choice of a surrogate decision-maker should be respected. A personally selected decision-maker should be permitted to act without the imposition of this costly and time-consuming

scrutiny of the validation procedure or the advocate process. The appointment of a health care proxy should be encouraged by a system that is easily understood by all. It is for this reason that our submission recommends simplification of the requirements to execute or revoke documents necessary to appoint a proxy.

We have other concerns with Bill 108. It is inappropriate to impose a positive duty on a proxy to comply with any wish given by an individual prior to incompetence. What if, for example, euthanasia has been requested? Should a proxy not be permitted to ignore care instructions where necessary, such as instructions that are medically unsound or unethical?

Furthermore, the legislation does not address circumstances in which instructions could result in the infringement of the rights of others. To give an example, Bill 8 provides that a living will should be invalid during pregnancy. Do the unborn or fathers have rights that should be protected and recognized over care instructions? We take no position. We are merely raising this as an example.

Finally, we are very concerned about the determination of incapacity under this bill. The Mental Incompetency Act currently requires a determination of incompetence beyond a reasonable doubt, but Bill 108 requires a balance of probabilities. This perhaps is satisfactory in an urgent situation, where alternative consent is required, but is this appropriate for the purpose of imposing a long-term substitute decision-maker?

#### 1410

The criteria for establishing competence are troubling. A person can be "incapable of personal care" if unable to understand information concerning clothing, hygiene and nutrition. By whose standards? We are concerned that the inclusion of these subjective criteria represents a failure to tolerate and respect differing standards exhibited by different individuals.

I would like briefly to mention some points about Bill 109. Bill 109 prohibits any health practitioner, widely defined, from giving any treatment, again widely defined, without consent. This valid consent, whether given by proxy or by the patient, must be specifically related to the treatment. It must be voluntary and informed. But consent is only informed if the person giving it has received all information about the treatment—alternative courses of treatment, the material effects, risks and side-effects—that a reasonable person would require to make a decision. How far must we interpret alternative courses of treatment? Further, in whose opinion will the risk or effect be material? In the patient's? In the practitioner's? Will an effect be material if it is rare? Will it be immaterial simply because it is insignificant to health?

Provision is made for treatment without consent, but in specified emergency situations. Dr Singer has already addressed narrowing the scope of this. He has addressed certain problems with this, because we believe the emergency exception is far too narrow. As Dr Singer has already told us, if the person is incapable of giving consent, treatment can only proceed without alternative consent if the delay is likely to result in serious harm within 12 hours. While it might be appropriate to ask a practitioner to determine



whether serious harm might occur—and even Dr Singer is unsure of this—we believe it is totally inappropriate to require determination of when serious harm will occur.

The treatment without consent can only continue for 72 hours. This time frame will be insufficient to permit the continuation of emergency care throughout, for example, a three-day holiday weekend. What if family members cannot be located? We recognize that the public guardian and trustee can make a care decision where no other is available, but we are very concerned that this will require costly over-time staffing of the office of the public guardian and trustee to permit standby emergency consent where necessary throughout the province during holiday periods.

We are very concerned about the costly duplication of services in the determination of incapacity. If a health practitioner finds a person to be incapable to give consent, and that person is conscious, an advocate must in all cases meet with the incapable person to determine whether he or she wishes to contest the finding by application to the Consent and Capacity Review Board. But if we assume that the practitioner has the expertise to make a determination of incapacity in the first place, is it cost-efficient to review that expert finding in all cases? How often will the board likely reach a different conclusion? Further, consider the cost even should review not be required.

We have this procedure now under the Mental Health Act, but under the new legislation we are not talking about admissions to psychiatric facilities. We are talking about any treatment in a wide variety of care facilities whenever a patient is incapable through shock trauma. In each case an advocate would be required to visit and report. Our concern is that the whole costly process will make health care unnecessarily adversarial.

Finally we are concerned with the health practitioner's protection from liability. Other proxies are held to a standard of good faith, but for a health practitioner to be protected from liability, he or she must have reasonable grounds for believing that consent or the refusal to treat is sufficient. How will we determine reasonableness? Why is a standard of good faith not applied to the practitioner? Furthermore, a health practitioner will only be protected from liability if treating without consent if the emergency falls within the strict criteria set out in the bill. That requirement of likelihood of serious harm within 12 hours should give grave concern to all practitioners.

**Mr Scane:** I would like to address the committee on the portions of Bill 108 which deal with the care of property of the incapable person. As an introduction, the Canadian Bar Association—Ontario approves, in general terms, the infrastructure which the Fram committee called a public safety net. We submit that as prepared and proposed by Bill 108, it is an unduly expensive situation, and in any event is going to be found to be undesirable in some specific areas. As an organization, we understand and indeed sympathize with the concern to protect the incapable person from economic victimization at various stages of the process, but we believe some of the amendments we are suggesting will permit a less costly public structure without significant dilution of protection for the incapable person.

As a preliminary observation, I urge members of the House that the Legislature should not even contemplate introducing or passing this bill in this form unless the government is prepared to adequately fund the public trustee's office to staff it sufficiently. If you do not do that, you are likely to build in some serious detrimental consequences for incapable persons, because there will be inevitable delays built into the process of taking over the affairs of incapable persons, and that can, for obvious reasons, be extremely prejudicial to their financial wellbeing.

The proposals we make in the report are often very detailed because of the nature of the subject matter and of the bill to which we are trying to respond. We propose to mention in this area only a few of the highlights. If the committee or its staff desires more discussion of any more detailed proposals than is possible in the question period here, the members of the Canadian Bar Association—Ontario are prepared to assist the committee at any later time that is convenient.

First, let me just reprise for a second: Bill 108 proposes that on either the granting of a certificate under the Mental Health Act or the finding of incompetency under the more informal assessment procedures proposed by the bill, any existing continuing power of attorney—that is, a power of attorney which continues past the acquisition of incapable status by the person who granted the power—is terminated and the public guardian and trustee will become the statutory guardian of property. Then the bill goes on and says that the continuing attorney has the power to apply to replace the public guardian and trustee again, and indeed will have priority over any other applicants to replace the public guardian and trustee and will have the advantage of being able to do so without bond.

Even with these concessions, we believe the choice made by the now incapable person while that person was capable is insufficiently respected. The bill proposes a vetting procedure—that is my term; in other words, a checking out of the personal characteristics and capabilities of the proposed successor to the public guardian and trustee—and the preparation of a management plan which will also be reviewed by the public guardian and trustee before anyone will be permitted to replace that officer as the statutory guardian.

Those reviews, if they are to be meaningful, should not be perfunctory. If they are not perfunctory they will be expensive—at the cost of the estate, presumably—to prepare and time-consuming to review. You are building in a very considerable delay in any estate that is not extremely simple, and that does not necessarily mean very large. This potential delay in taking over again by the person who will have the long-term responsibility for looking after the economic affairs of the incapable person could be very harmful to the estate. We do not agree that this is a necessary delay when the person to take over is the person who has been chosen by the now incapable person, while that person was capable of doing that job.

We propose essentially that a continuing attorney should be able to take over from the public guardian and trustee by a very simple application not involving either



that personal vetting procedure or review of the management plan.

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In other cases, with just one exception, we generally agree with the proposals of the bill. The exception involves the ability of a family, as we very narrowly define it in our submissions, acting unanimously to appoint a person to replace the public guardian and trustee without going through the vetting procedure or the management plan. We feel the immediate family is normally the most concerned about the wellbeing of the incapable person, including that person's financial wellbeing. Our requirement for a family, that it consist of at least two persons and that they be unanimous, we believe sufficiently protects against the potential for abuse.

There are a number of formal requirements proposed by the bill that are obviously designed to protect against exploitation of the incapable person by persons who would seek to procure a continuing power of attorney while the donor, the person of whom the power is asked, is already in an incapable stage. We approve the object, obviously, but we feel that there is overkill, which may have self-defeating aspects.

Certainly the proposals of the bill, if implemented, will have the effect of making supervision of creation of continuing powers by lawyers more expensive than it otherwise would be. This, despite the cynics who may be listening to me, is not a self-serving observation, or certainly is not intended for that purpose, because it may lead to more persons avoiding legal professional involvement in this particular area. I submit to the committee that the protection against exploitation that the involvement by reputable lawyers in the process can give is a very substantial protection indeed.

Also, and this one has given us considerable concern, we object to imposing upon a witness to the execution of the document the obligation to state an opinion as to a person's capacity, even in the negative form in which the bill is presently expressed. If the witness takes this seriously and the requirement offers very little protection, except in the most extreme and obvious cases if the witness does not take it seriously, the witness should have had sufficient opportunity to observe the various factors set out in section 8 of the draft bill. Even then, mandating an expression of opinion on this subject we think is too much to ask of a layperson. What you are doing, again, is building in a high cost factor simply because you are going to find it very difficult to find competent witnesses who are not also excluded in the act by the exclusionary provisions for witnesses.

We also have very serious concerns about the duty of care imposed on continuing attorneys and statutory guardians. The bill is obviously trying to introduce what the Fram committee called objective decision-making, the making of the type of decision that the incompetent person would have made if competent, in so far as you can determine that. I think it also wishes to preserve as much of the dignity and autonomy of the incapable person as is possible in the circumstances. Certainly that is a laudable object. To this end, however, the bill requires among other things that the substitute

decision-maker involve the now incapable person in the decisions.

On the other hand, the bill sets standards which we interpret as trustee-like standards of an objective nature as part of the duty of care for the substitute care giver. Those two goals are not compatible except fortuitously in a given set of circumstances. We believe the objective, trustee-like standard of care is the right standard of care to impose. Mandating consultation, mandating regard to a guess at what the incompetent person would have chosen if competent we think puts the continuing attorney or guardian in an extremely difficult position.

Suppose something goes wrong. What do you think the changes are of raising a successful defence that, "This is what the incompetent person wanted me to do," or, "I thought that is what he would have done," if objectively the decision has lead to economic loss? We think all that would happen is the substitute care giver would be nailed. We think any professional adviser would tell him that. Therefore, to mandate a course of conduct which, if followed, will provide no defence if something goes wrong is the wrong thing for a Legislature to be doing.

There is one other point we would like to make. We object very strongly to the proposed total immunity from liability for acts done in good faith by the public guardian and trustee. That is not in Bill 108. It is buried in the omnibus bill, Bill 110, in section 22. This kind of crown immunity from the consequences of any breach of its duty to the public is a relic of a past age, and in our submission it should be left there. It certainly has no place in any scheme for the supervision of the property of persons who by definition are unable to look after their own affairs.

**The Chair:** Thank you. Are there any questions or comments?

**Mr Poirier:** I have lots. Judging by the thickness of your presentation and the short time we have, I will not be able to even start. Suffice it to say that I presume your document contains all your recommendations about what you would like to see kept or thrown out.

**Mr Scane:** Yes.

**Mr Poirier:** It is quite a voluminous thing. We could spend almost an entire day going through these point by point.

**Mr Scane:** It is the result of several weeks' work.

**Mr Poirier:** No doubt, to say the least, if not months. You make some very specific recommendations with regard to the changing of wording and whatever in here.

**Mr Scane:** Yes.

**Mr Poirier:** Fair enough. Whether a proxy should ignore medically unsound requests is quite a decision to split apart, is it not, because if you have a legal responsibility as proxy, I presume you have the moral responsibility of following what the request was, assuming the request was something legally and medically correct or acceptable by normal standards.

**Mr Scane:** Dona, I think this is your bailiwick.

**Ms Campbell:** The problem is even wider than that. It may be a request for an allocation of a scarce health



resource that the proxy is simply unable to obtain within the time frame for the person. There is no flexibility for a proxy. They simply are held to the standard that they must comply with whatever wish is set out.

**Mr Poirier:** Did you address the compatibility of all these different bills together?

**Ms Campbell:** Yes.

**Mr Poirier:** You also addressed, from what I heard briefly, the cost of all this. Obviously you must feel that at the current level of funding for that type of program something would have to give, I presume, if I read between the lines.

**Mr Scane:** What I think we were both saying is that to do what this bill requires is going to require a substantial increase in staffing, how much I would not presume to say, of the present office of the public trustee. I think you would have to ask the present public trustee that. Presumably the assessment procedure and the supply of advocates—we are getting a little away from the section I was addressing—are all going to have to be paid procedures, or what would normally be paid procedures. All of them have a cost.

My comment was simply, do not try to do a half-baked job. In other words, do not try to impose all the obligations on the offices, for people are then necessarily going to be made to wait while an inadequately staffed government office tries to respond to the flood of requests you are going to generate. It seems to be defeating the object of protection you are trying to achieve.

**Mr Poirier:** Exactly. How much time do I have?

**The Chair:** About two more minutes.

**Mr Poirier:** I think that is a very important point between the principle of it all and the actual delivery of that said service. You seem to see a Grand Canyon shaping up between what you want to do and what you can do about it. I would like to ask the parliamentary assistant if he has a comment on that or if he will provide us with a reaction of the ministry or the government pertaining to that type of fear. I do not think I have seen it, but I would like to formally request the parliamentary assistant, in the time we will be studying this, to come forward and look at this and give us his comments on this.

**Mr Malkowski:** I will simply refer that to my staff person for comment.

1430

**Mr Fram:** Evaluation of costing has been going on and indeed substantial resources would be required to do it. I agree totally with Mr Scane and the Canadian Bar Association that to impose the legislation without the resources would be irresponsible.

**Mr Poirier:** Will the government come forward with a document that will propose implementation as to how much, when and where pertaining to this, assuming that this all goes forward? Will the government formally respond soon on this or what?

**Mr Malkowski:** I would like to refer it to David Winninger.

**Mr Winninger:** That is certainly a legitimate question to ask. I imagine once the cost consequences of implement-

ing the bill become known, information might then be shed, but at the present time, until this legislation is amended, if it needs to be amended, and the implications are explored before the committee, I do not think that information can be made known. I think it would be premature.

**Mr Poirier:** But can you ascertain that your government is working on that right now to try to draw up on a calculating machine a final estimated extra cost of this?

**Mr Winninger:** As far as the nuts and bolts are concerned, I would have to refer that matter to Mr Fram.

**Mr Fram:** Calculations in fact are going on in discussions.

**Mr Poirier:** What concerns me, with the nice principle of all this and with what is happening with the economic situation of the province and your government, is if when you press "total" on your calculating machine you realize, "Oh my God, we may have done this all for nothing." I hope not, but I would ask of you formally, as soon as you can to come forward and bring us an idea as to how this can be done. It is a hell of a noble principle. Tell us the theoretical application of this for all these people here today who expect this to be brought forward by your government, how much in the next fiscal year, the year afterwards, or exactly when and how much extra. Make sure that the fears of all these people, who expect this to come forward in the practical aspect, do not materialize.

**Mr Winninger:** I think those fears at this time might be premature, because all the functions of the public guardian and trustee's office will have to be budgeted for. As the members of the Canadian Bar Association are well aware, there already is an office of the public trustee and there already is an office of the official guardian. Some of those responsibilities may be blended, but the infrastructure is already there to a considerable extent.

**Mr Sterling:** I want to thank the Canadian Bar Association for putting together an excellent brief. Would you thank all the people who participated in putting it together? I realize a lot of people worked on it. I often wonder, would I go back and practise law if I ever left this place? I think I have found a fertile field to return to.

**Mr Poirier:** If you ever left this place.

**Mr Winninger:** We can arrange that.

**Mr Sterling:** I might say they both have tried in five elections and have not been successful.

I have been concerned very much with the first point raised in the first part of your brief, and that is the separation out of trying to deal with a number of different problems within one consent process. I have not read your brief in its entirety, of course, because I just received it, but have you tried to delineate where it would make more logical sense for the government to be more interventionist? Where should they back off in terms of the stringent requirements of the public trustee, the people who are dealing with the public trustee, and what is obviously going to be a gold mine for the legal profession in terms of advising the citizens of Ontario to deal with this very complicated process?

**Ms Campbell:** The submission deals on a section-by-section basis with those sections we feel are overkill. I



might say it is a gold mine we do not want. But to truly address that particular issue, the separating out, I think you would require more input from the medical community itself. I think they would be very well versed to advise you as to the circumstances—acute and terminal situations, for example. There are ad hoc procedures working now by which people communicate these things. I think perhaps some dialogue between the legal community and the medical community could come up with a good delineation of those circumstances where this is not required.

**The Chair:** Ms Campbell, Professor Scane and Mr Heighington, on behalf of the committee I would like to thank you for taking time out of your busy schedules to appear here today.

#### ADVOCACY CENTRE FOR THE ELDERLY

**The Chair:** I call forward our next presenter from the Advocacy Centre for the Elderly. While we have a short break, I would like to remind the committee members that we will be starting right on time and according to schedule no matter who is here. Because of the number of presenters we have, we have to stick to a pretty tight schedule.

I would like to welcome you here today. Could you please introduce yourself for the record and then proceed.

**Ms Wahl:** I am Judith Wahl from the Advocacy Centre for the Elderly, and with me is Saara Chetner, our institutional advocate. The Advocacy Centre for the Elderly is a legal aid clinic that acts on behalf of senior citizens aged 60 and over. Our primary jurisdiction for case work is within the greater Metropolitan Toronto area, and our work in law reform and public legal education is cross-provincial. We have been open since 1984 and our comments on the proposed legislation are based on our experience of our direct advocacy and legal work on behalf of senior citizens.

This is a submission on behalf of my board of directors. There is actually a clause-by-clause submission. It is not yet before you because my board has to approve it before it gets to you, but it should be here within the next two weeks, well before your committee finishes its work. What I have given out to you is really more of a summary to guide you through what I am going to be presenting today and to give you an idea of where the Advocacy Centre for the Elderly stands on these matters.

As a preliminary statement, I want to tell you that the Advocacy Centre for the Elderly is very supportive of the proposed legislation. This should not be surprising because we have been involved since 1984, sitting as a member of the Fram committee. I myself was our representative and a signatory to its report. Much of that material was taken back to our board and considered, and as a result it is not surprising we are supportive of the Substitute Decisions Act and Consent to Treatment Act. Although that specifically did not come out of the Fram committee, it originally formed part of those considerations.

What I have chosen to present to you today is really the framework, what our concerns are. You are going to hear many detailed briefs over the next period of time from many different opposing positions. I have seen many of those briefs. What we are concerned about communicating to you are the principles that we see as important in this

legislation. Then I want to address some specific comments to the Advocacy Act, with which we have more concerns than the other legislation.

1440

We see the Substitute Decisions Act as the basic framework for the law in substitute decision-making, but we see all these acts as a kit or a system. Substitute decisions and consent to treatment are the framework for substitute decision-making and advocacy is the service that works within that framework, so they are interconnected. Our concern is that whatever legislation results, that is, whatever is proclaimed, all the pieces are remembered, that no one piece gets proclaimed without the other pieces, so you do not see advocacy without substitute decision-making or substitute decision-making without advocacy, because of the interconnection.

The Substitute Decisions Act establishes, in our opinion, who are the decision-makers. It confirms that in fact people who are capable are entitled to make decisions for themselves. This may seem a very simplistic point, but every day in our work this is a point we have to drive home to many service providers and families, and confirm to senior citizens, that they have the right to make decisions for themselves. Just because you are old does not mean you are not capable, but we live in a very agist society, so I am pleased this kind of confirmation is in the act. It is just the statement of a common law.

We are pleased to see there is a confirmation of a presumption of capacity, that people are capable unless there is evidence otherwise. We are pleased to see there are processes established by which persons, when capable, can choose who should be their substitute. The most frequent work we do at our clinic relates to mental incompetency or substitute decision-making. Many people seek assistance in preparing financial powers of attorney. They want the ability to do personal powers of attorney. We applaud the fact that this is in the proposed legislation.

We are also pleased these acts provide an effective process by which a person alleged incapable may challenge the allegations of incapacity. This is very important. This process to challenge must be more than just saying, "You have the right to challenge," which you can see under our present mental incompetency legislation. We have had cases where people have been alleged to be incapable and the process starts under that act. They are supposed to be served with the documents so they can challenge this allegation of incapacity. Yet that never happens because they are not served with the documents, even though the requirement of the act is that you must be served, or they do not understand the documents or they are frightened when they receive the documents. You think: How would you feel if you were served with documents alleging you were incapable? We feel the advocate is a very important element in providing the real due process, the real protection to challenge an allegation of incompetency.

We also are pleased with the provisions for emergency intervention of the public guardian and trustee if the person is allegedly incapable of managing property or is allegedly incapable of personal care and may suffer serious adverse effects, what I call the limited adult protection role for the public guardian and trustee.



Ontario has taken a deliberate step away from adult protection legislation to instead go the guardianship route and provide an advocacy service to avoid people becoming dependent on guardians unless they indeed are incapable. I think this is a great improvement over legislation you see in such provinces as Nova Scotia, which has taken a very interventionist type of adult protection legislation that is modelled after child welfare legislation. Adults are not children; they are adults. They have the right to be assumed to be competent and to receive the protection on their terms. We see the limited role of the public guardian and trustee to be that intervenor sufficient to provide the protection that is necessary, without getting into a whole adult welfare system.

In terms of the Consent to Treatment Act, we see this primarily as a codification of the common law. Quite frankly, we are at a bit of a loss to understand a lot of the criticisms of this act that have appeared in the papers or that we have heard stated. Much of this already is the law. Perhaps that is why it needs to be codified. People do not understand how it works. We frequently see health practitioners not following the procedures in terms of consent to treatment. Putting it into the act certainly has raised the issue with many health practitioners and made them think a great deal more about this. This also raises the issue of education for health practitioners. They do not understand the law now. If this goes through, they need the education to put it into effect more appropriately.

We are pleased that the Consent to Treatment Act clarifies who is the substitute decision-maker. Many of our clients are in this situation. In some cases they are competent to consent to treatment and have no way of challenging that determination effectively. This act would give them that process. For the people who need substitute decision-makers in respect of consent to treatment, this will set out the list so we will know who along the way will be that substitute. It also gives, again, the opportunity for somebody to do a personal power of attorney so that he can select who will be his substitute decision-maker.

We are pleased that the Advocacy Act is the development of a service to support the provisions in the Substitute Decisions Act and the Consent to Treatment Act and also gives the advocates a greater power to do things like systemic advocacy. We really believe in the development of an advocacy system. I am saying that right up front, even while I give you some criticisms of the Advocacy Act. That is why we created an institutional advocate in our office.

Saara Chetner fulfils this role in our office at this point. She is a lawyer. We do not necessarily see that it has to be a lawyer playing that role, but we are part of the legal aid system. That is why we decided to go with the lawyer model. But in her role of being an advocate we have seen the demand for this service. Saara can certainly attest to the number of calls that come into our office for assistance. She is involved with people who live in long-term care institutions and provides a great deal of advocacy service, and we can see the need for the development of a broader service. Certainly we are getting calls from all over Ontario for this role. She can obviously only service the greater Toronto area.

I emphasize that we see all these acts working together as a system. I will make the distinction we are making between the different acts. We see substitute decision-making as a protection system. This is the protection system that is being developed, rather than an adult welfare system in this province where the substitute decision-makers are decision-makers as opposed to the advocates. The advocates should not be decision-makers. They are there to assist people, to empower them, to help them exercise their rights, but we do not see the advocates as acting on behalf of people who are not capable of giving instruction. That is the role of a substitute decision-maker.

We see the advocates as having a limited role in the protection scheme. In effect, what would happen is that the advocates would play a multiple role under the act or could play a multiple role under the act. They are there to assist people to be as capable as possible, to empower them, to assist them in exercising their rights, to give them information so they can determine their options. They are also in a sense a watchdog on the substitute decision-makers. If a substitute decision-maker is not acting appropriately and is causing harm to a person who is incapable, I can see the advocate reporting that to the public guardian and trustee's office, because it is the role of the public guardian and trustee under the Substitute Decisions Act to be the main watchdog on the substitute decision-makers and to supervise them. The public guardian and trustee has very specific roles to sanction substitute decision-makers. But we do not see the advocates taking over that role of a decision-maker.

You will see from what I have given you that I have set out some specific concerns about the Substitute Decisions Act. One of our major concerns is the appropriate financial support to the public guardian and trustee's office if this act is going to work. We deal frequently with the present public trustee's office. Our greatest frustration is not what they do but that they are not staffed enough to do what they should be doing and could be doing. If they are going to take over the role of public guardian and trustee, which is a multiple role under this act, they need the appropriate staffing and funding to be able to do that. We are very concerned that we have not seen that support being given to the public trustee right now to plan for this legislation.

After any of these acts come through, we also want to highlight the fact that there needs to be a great deal of education. We have done probably about 50 public speaking engagements explaining what these acts mean. The reason we did that and chose to do that—in some cases, on behalf of area directors from the Ministry of Community and Social Services—was that we were very concerned with making sure members of the public understood what was in this legislation, so they could come before you if they wanted to comment on that act, so they would be aware of what was in it.

1450

Many people have said to us at these sessions that these acts are very complicated and that they do not understand them. They are actually less complicated than they appear on the surface, or that is what I would argue; it is a matter of explaining it in a way that is user-friendly. It is very important that when you are determining what happens



with these acts you make sure there is provision to permit the appropriate education of the public and the practitioners, the service providers who would have to apply these acts.

Under the Substitute Decisions Act, we are concerned that there is no investigative power for the public guardian and trustee. You want the public guardian and trustee to play a certain role. In fact, at one point they are specifically given the duty to do this emergency protection, but no investigative powers are set out in the act; there are no powers of entry. That will need to be changed in the act if you want the public guardian and trustee to play that role.

In the Consent to Treatment Act, again we are concerned about the need for education. This is also based on our experience of doing a great deal of education for medical practitioners—nurses and doctors—who do not understand the present law on competency. This would have to be built into what is created to make sure people are aware of how this law would work.

The other specific concern we have about that act is the requirement for the advocate to visit if a health practitioner believes a person is not competent to provide consent to treatment. There should be the option of the person meeting with the advocate. I would love to be able to see the advocate meet every time with the person, but on a practical basis we do not see how this could be done. We are suggesting an amendment to ensure that the person is advised of his or her right to meet with an advocate and is given that opportunity to meet with the advocate if he or she so wishes. If he decides not to and in effect drops out of the picture and decides not to do anything, the procedure could continue and the person could turn to the substitute unless there was a challenge to the competency.

Last, just looking at the Advocacy Act, they said: "We're very supportive of the development of an advocacy system. We wouldn't have created the position of institutional advocate if we didn't believe strongly in the role of an advocate system." But the problem we see with this act is that we are really unable to determine what the advocacy system will look like. This act sets up the Advocacy Commission, which is then given the authority to create the advocacy system, and the rest of the act deals with some specific powers of the advocates, but it is not clear from this act how the advocacy system would look or how it would operate.

When I have done presentations on this, I keep talking about the fact that the system could be of tremendous value, that it could be on the side of the angels, but it could also be on the side of the devil. Advocacy is a very powerful position. If there is anything I have learned since I have been at the Advocacy Centre for the Elderly since 1984, it is that the role of the advocate can be a very powerful position. It is just that we are not exactly sure what this system would be. Would it be on the good side or the bad side? We are saying the potential really is of particular concern if the commission provides authority to advocates to act without the instructions of vulnerable persons. We see advocates acting on the instructions of a person. If they are not acting with instructions, how would the system work?

Personal liability: Section 9 of the Advocacy Act protects advocates and commission members from any personal

liability. We submit that advocates and commission members should be responsible for their actions. I am an advocate and I happen to be a lawyer advocate, but I certainly am accountable for what I do. I do not see why an advocate acting under this act should not be held liable for his or her actions. I do not think this is a great, dramatic statement. People should be responsible for what they do.

Rights of entry: We are concerned about the rights of entry of the advocate, particularly to a private home. This has been expressed to us by many senior citizens. They consider this to be too broad. We see that advocates should have a right of entry on consent, and then if there are reasonable and probable grounds to believe a person is within a premises who wishes to have access to an advocate, the advocate, if not getting entry, should be required to get a warrant for the entry. It is accounting for the fact that they are getting access to a private home.

Access to records: We see it as positive that the advocates have fairly broad access. We would actually encourage the government to include this right of access to records for everyone so that everybody could see their own health records. Beyond that, we are concerned with the commission being able to give authority to an advocate to see records. We submit that the advocate should not have the right of access to records with the commission's permission unless an individual gives his consent. It is really focusing on the individual and the control of an individual over his own records.

I know some concern has been expressed that unless advocates get broader access to records, they will not be able to do systemic advocacy. I think there are a lot of things to do systemic advocacy about without worrying about getting that access to records. I do not think that is necessary. It is too much of an intervention, an intrusion into people's rights over their own information about themselves.

Training and qualification of advocates: It is being left to the commission to develop qualifications and educational standards for the advocates. We submit this should be right in the act. It should not be left to the commission. It should be said up front. This would give a much better flavour of what the advocacy system would look like.

Non-instructed advocacy: The commission is being given the power under clause 36(d) to determine how advocacy services are to be provided to persons who are mentally incapable. We submit this is an inappropriate role for an advocate. It puts them in a conflict position because then they become decision-makers. I bring you back to our basic distinction: We see substitute decision-making as the protection scheme and advocacy as an advocacy scheme. If advocates become decision-makers they are going to be in conflict and might not be able to act appropriately for the very people they are trying to service.

The availability of advocates: We are concerned that there will not be sufficient advocates, either paid or volunteer, to meet all the needs under these acts. This is not a reason for trashing this act. We say again to you: We want the advocacy system developed. We want to make sure there is going to be sufficient provision and support for this system. To tell you the truth, I am more worried about an inadequately staffed advocacy system, an inadequately staffed



public guardian and trustee than anything else, because it creates the effect that something is being done. It makes it look like something is being done, but then when people need the services, they are not there. It has to be properly staffed to work well and to permit the advocates to perform all the roles they have under the three acts.

Last, the advocate's relationship with substitute decision-makers: Many people have expressed to us concerns about how the advocates will interact with their families. We see no conflict with the advocate acting on behalf of a substitute decision-maker as long as the substitute decision-maker is not in conflict with the person who is incapable. The advocates could in effect provide very effective assistance to families who are themselves providing services to their relatives and acting as advocates for their relatives. These advocates, we assume, are going to have a knowledge base. They are going to be trained. They are going to have a skill which they certainly could use to pass on to families so that they could be more effective advocates.

Our vision of the advocacy scheme includes advocates assisting and helping substitute decision-makers where appropriate. I draw the comparison to our advocate. We act primarily for senior citizens who are capable of giving instructions on a particular issue. Notice I did not say mentally competent because competency relates to the specific task at hand. The advocate can take instructions if the person is competent to give instructions on that particular problem, so the person may have been declared incompetent for some other purpose but still be competent to instruct the advocate. When the person is not capable of giving instructions to a limited degree, our advocate takes instructions from substitute decision-makers, families and friends who have the authority to act as a substitute, where it is supportive of the person who is incapable and is in need of assistance.

If you have any questions, I will try to address them.

1500

**Mr Curling:** So many questions are raised, but I will focus on maybe two, considering the short time we have. As I get to understand these three bills, I get the feeling of a Big Brother syndrome: Big Brother is watching you. You use the line, "The role of the advocate is a very powerful role." I know we start from the base that we are all honourable people, but somehow as soon as one takes over another individual's life—sometimes we get away with it. We hope that they will treat our lives fairly. I am very worried about how far we go, as you said, as an advocate, because we can be extremely detrimental to the person's direction of life afterwards.

I want to focus on the education part. On both bills you talk about the education of the public and professionals in the sense that everyone understands the scheme. You said it is not complex. I find these things are actually rather complex. I raised to the government presenters earlier that we have a high rate of functional illiteracy in our province. Institutions have a high rate of illiteracy too. For people to understand that and to understand this bill and the way it is presented or whatever brochure they send about, how do you see the government addressing that concern of carrying

that information or educating those people within those institutions?

**Ms Wahl:** I can see this being done in a multiple way. This is an off the top of my head idea, but I can think of what we do already in legal clinics. We prepare brochures which are done at a very simple reading level to try to have as many people as possible access that kind of information in writing. Some of this information is also put into Braille. Some of it is put on tape to help people understand, if they cannot read. You can use a variety of vehicles.

Some of the clinics use videos. I can think of Justice for Children which has done videos on pretty complex legislation, the Young Offenders Act, to explain rights to children and to young adults. You can use all the different forms of media, in effect, to explain this kind of legislation. It is essential that education be done. The acts are complex—any act is complex—but I think there are ways around it. There are ways of communicating it. How do we communicate the tax act to people?

**Mr Curling:** We do not.

**Ms Wahl:** We can do a much better job at this.

**Mr Curling:** It leads to the question my colleague raised earlier about the cost. As we go along, we ask the government to carry a calculator with it. You spoke a minute ago. They were saying to us it is going to cost us a lot to reach all those people with different strategies and different approaches. It will cost money. We hope we do not raise the expectation of people that when this bill is ready for them, they can understand it.

There is one other point I want to raise, though, freedom of information and access to information. I can tell you this: Since the freedom of information bill came in, I have even greater difficulty getting to any information. It seems to me it is more difficult to get to it.

**Mr J. Wilson:** That is because you are in opposition now.

**Mr Curling:** Is that it? Do you see that access to people's information in that way would be much easier or do you find that it is quite an intrusion?

**Ms Wahl:** I am not sure how to respond to that because I have to admit I do not know enough about the access to information act, so I am not sure. I have not looked at that and how it compares to this. I want to make one comment, though, about the cost.

Yes, there is a cost in terms of the education but you also have to look at some of the existing moneys. For example, if this legislation goes through I can assure you that our clinic would end up doing educationals to senior citizens and service providers to seniors on these acts. You already fund us. The Attorney General's office funds us through the Ontario legal aid plan to do that work. It is an existing expenditure. It is not a new expenditure. It is the same with Community Legal Education Ontario. That clinic exists only to provide public legal information, so I suspect this would form part of their regular budget.

**Mr J. Wilson:** I think you have taken a very common-sense approach to the legislation. On page 8 it seems you have a concern about the best use of limited resources

when you suggest that it is not necessary in all cases when a person is deemed incompetent to have an advocate on the scene, that perhaps just notifying the incompetent person of the right and opportunity to meet with an advocate is sufficient. Did you have in mind cases where acute care is required, for instance, and it would not necessarily be the best thing to have the advocate and may be a waste of resources to have the advocate intervene?

**Ms Wahl:** It depends how you see the advocate. I see the advocate under the Consent to Treatment Act purely as a rights adviser. These acts are set up so that every time you are going to lose your right to decision-making you get an opportunity to challenge that. To put into true effect the ability to challenge is the role of the advocate, to make sure you are aware of your right to challenge. I am trying to think of an example in acute care where this might arise. A person is in hospital. The physician does not believe that person is competent to give consent to treatment. Then he would be advised that the physician is going to look for a substitute. He has an opportunity to see the advocate if he wants to challenge or wants more information.

**Mr J. Wilson:** In that case, who does the advising, the physician?

**Ms Wahl:** Under this system the physician is going to advise him of the opportunity. I guess I am putting some trust in that physician to make sure that is truly communicated. The problem is that we cannot see a way around this to ensure that, to always get another party to come in. We have to rely to some degree on the physicians, dentists or nurses, on whoever is going to provide the treatment, to make sure the person is aware of the opportunity and to make it a true opportunity. It is not just, "I told you you have to have an advocate," and then they start to treat. They give them that real chance to make sure it is truly communicated. I do not see another practical way of doing it.

**Mr Sterling:** Do you see a requirement that the physician give the vulnerable person a written notice as well as talking about the treatment? Do you see that as being useful?

**Ms Wahl:** I do see it as being useful because I think it emphasizes the fact that they have this right. Some people may consider this overkill but it may be the only opportunity the person has. I can give you an example of one of our own cases. We had a woman who was determined to be incapable and in fact she was deaf. She was living in a chronic-care hospital and a procedure was started to declare her mentally incapable. It was her friend who picked this up and met with us. We met with this woman and provided her with the assistance she needed to get the proper assessment done and to give her an opportunity to challenge.

**Mr Sterling:** You mentioned some problem with the Advocacy Act and I was interested in your remarks on that. Part of the problem I find is that this idea they have, the right to act or make decisions, is a little frightening in terms of who these people are and what guidelines they are operating under. There are no guidelines specified. Do you believe that under the Advocacy Act there should be a mechanism whereby vulnerable adults would have the opportunity to complain about an advocate?

**Ms Wahl:** I think it would be necessary to be able to do that. I will draw a comparison with our legal clinic. Any client has the opportunity to complain about any of the services we deliver as lawyers or advocates, by means of an internal complaint mechanism we have. My staff are instructed that if the client wants to complain, there is a whole process that can be followed. We want to be sure people get the appropriate service. As a parallel to the advocacy system, people should be able to complain about their advocates and should be able to get to the commission so the commission can sanction the advocates if necessary. The advocates must be responsible for the work they are doing as advocates.

**Mr Sterling:** So you think they should be open to criticism and review for their actions.

**Ms Wahl:** Sure. I am not sure whether you need to put the complaint mechanism in the act, but certainly that is something that should be part and parcel of an advocacy system.

**Mr Sterling:** My concern is advocates who venture out on their own. It is very difficult to get rid of people who may or may not be doing what is in the best interests of the patient. If it can be proved that advocates are acting on their own motivations with vulnerable people, I think they should be dismissed.

1510

**Ms Wahl:** I agree with what you are saying, but the one I am going to comment on is that the advocate should not be acting in the best interests of somebody; he should be taking instructions from that person. They take instructions. Others may not think those instructions are appropriate, but they are taking instructions and expressing what that person wants expressed. It is what I do as an advocate. I offer options to a person. I help them select between a series of options. I give them advice, but I am not working in the best interests of my clients. Our advocate does not work in the best interests of the clients in that sense. We act on instructions.

**Mr Sterling:** Yes, you are correct.

**Mr Poirier:** Just very rapidly to follow up on that, yes, you take instructions, but after giving advice, so the advocate could be found not to act. Norm was worried if they did not act properly, but what if they did not act? What if they did not offer all those adequate types of information, the complete gamut of possible options for them to instruct you afterwards? That is also a possibility that could happen.

**Ms Wahl:** Sure, but that can happen with anybody who is giving advice to another person.

**Mr Poirier:** Of course.

**Ms Wahl:** That is why you have to structure the advocacy system appropriately so the advocates are accountable, are appropriately trained and have proper supervision so they are acting as effective advocates, not decision-makers.

**The Chair:** Ms Wahl and Ms Chetner, on behalf of the committee I would like to thank you for taking the time out to give your presentation to the committee.



COLLEGE OF PHYSICIANS AND SURGEONS  
OF ONTARIO

**The Chair:** Our next presenters will be from the College of Physicians and Surgeons of Ontario. For the information of the committee, it would appear that there are some people scheduled for 45 minutes. There is a 15-minute block set in the schedule to catch up for late starting or people who overrun.

Good afternoon. I would like to welcome you this afternoon. Could you please identify yourself for the record and then proceed.

**Dr Morrison:** Thank you for providing us with the opportunity to address you. I am George Morrison, president of the college council. With me today are the vice-president, Rachel Edney; the senior public member of the council, Bala Nambiar, and the registrar of the council, Michael Dixon.

In order to allow time for questions, we will focus primarily on Bill 109, the Consent to Treatment Act. We will provide the committee with a more detailed clause-by-clause analysis at a later date.

At the outset, I want to express concern about the consultation process on all four bills. With legislation as significant and far-reaching as this, it is not surprising that considerable controversy occurred. The Minister of Health has appropriately acknowledged the criticism and tried to clarify the government's intentions regarding some sections. In others under dispute, she hoped common sense would prevail in applying the legislation, but common sense cannot apply in the absence of clear legislative direction, and unfortunately no clearer wording has been produced to clarify the government's intentions or to guide the input of interested parties at these hearings. Compounding our frustration is the fact that the government has apparently drafted some amendments but declines to make them available at this time.

This legislation is attempting to achieve an important balance between health care providers and patients, between the consumer's right to choose and the practitioner's ability to provide quality care. The task is difficult because the viewpoints are far from unanimous, as these hearings will demonstrate, but much more could have been accomplished if all the participants had a better understanding of the government's developing positions.

Be that as it may, we will comment on the only available and concrete evidence of the government's intention, Bill 109 as currently drafted.

We have many specific concerns, but today we propose to highlight the following:

1. This bill's requirement for the intervention of an advocate in all cases where a substitute decision-maker is needed will inevitably delay both diagnosis and support for the patient.

2. Delays in obtaining consent should not compromise basic medical care.

3. This bill cannot be effectively enforced unless it establishes rules which are workable and understandable for patients, their families and practitioners.

Last December Ms Lankin said that the goal of this bill was to establish for all Ontarians the "right to be informed,

the right to make their own health care decisions and if mentally incapable, the right to have someone make decisions on their behalf." These are fundamental principles of health care which we support. As a professional regulatory body, the college's legislated mandate is to protect the public interest.

In our instructions to physicians regarding informed consent, we state: "The patient has the right to accept or reject any investigative procedure or treatment offered....This right can only be exercised meaningfully if the patient has been given a fair explanation of what is proposed to be done, and what the potential benefits and risks are."

It is worth noting that this standard is supported by common law. The government has concluded that this current system is flawed and that steps to codify rules to protect and enhance patients' rights are necessary. But you cannot do this safely without recognizing that the patient's right to make an informed consent does not, and should not, supersede the patient's right to receive, at the very least, humane and supportive care until the uncertainties of consent have been sorted out. Some of the groups coming before you will disagree with this position. But Ms Lankin is right: There must be a balance in the patient-practitioner relationship. Unfortunately we do not believe that Bill 109 in its current form has achieved this.

In fact, the very complex, confusing and virtually unworkable list of steps required in any case of doubtful capacity could actually place patients, especially those the government most wants to protect, in a position of significant risk. Dr Edney will explain further.

**Dr Edney:** I am a family physician in Mississauga, where I have practised for 10 years. Dr Morrison has said this bill puts patients at significant risk. I would like to explain why.

I could be on call in a community hospital's emergency room late Saturday night. Two young people bring in their friend for care. They have spent the evening drinking at the local pub. The patient, a 17-year-old woman, is flushed and sweating. There is a rash visible on her exposed skin. Although conscious, she appears to be somewhat delirious. I go through the possibilities: Is she intoxicated, does she have the flu or is she in the first stages of meningitis?

Under Bill 109, I must assess her capacity to consent to treatment first. I conclude she is incapable because of her mental state. I must now notify her in writing of my decision and notify an advocate. Her ability to understand this procedure is not relevant, nor is the fact that an advocate may not be readily available in this small community hospital on the weekend.

Without proper consent, I cannot begin treatment unless the patient is at risk of significant harm within 12 hours. But since the definition of treatment includes diagnosis, therapeutic or preventive activities, I am unable to examine her, take blood samples or do a lumbar puncture—all necessary steps to determine if an emergency exists.

The advocate meets with the young woman and tells her she may challenge my conclusion. If she objects, then the advocate must help her apply to the Consent and Capacity Review Board for a ruling. I cannot begin treatment until the board has rendered a decision.



If the patient does not object or refuses to meet with the advocate, I am informed. I must then find an appropriate substitute decision-maker: a guardian, attorney, spouse, child, parent, sibling or other relative. If I am not able to locate any of these individuals within a reasonable time, I must notify the public guardian and trustee.

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If I do locate a substitute, I must ensure that this person is capable of making the decision and I must explain the principles that should guide the process. The substitute must state that he or she is qualified to decide according to the criteria laid out in the bill.

What is happening to my patient during this time? So far she has received no treatment, not even a diagnosis. If she is drunk, this process will certainly sober her up. But what if her condition is more serious? And how do I care for the other five patients who have come to the emergency department in the meantime?

I do not believe this is an exaggeration. This is what the legislation is saying. And as a health-care practitioner, I must follow that direction. The bill may be protecting this patient's right to consent, but it is seriously compromising her right to receive necessary medical care.

Basically the system as designed will not work, especially in a family practice setting. For example, I cannot judge a 15-year-old patient seeking birth control advice capable of consent without calling in the advocate. The legislation states that a person under 16 years of age is presumed incapable but that this assertion may be rebutted. In the ministry's original consultation paper, practitioners were clearly entitled to make that determination but this has not been clearly translated into Bill 109.

The minister said she did not want to prevent young teens from seeking care for birth control, sexually transmitted diseases or family problems. But young people who come to my office for this care are often uncertain and scared. Knowing that I must call in an unknown advocate to help them decide will be a very significant barrier.

Family members faced with the care of an elderly parent with Alzheimer's disease will no longer be able to consent for the care of that incapacitated parent until a government-appointed advocate can speak to the parent to acquaint her of her rights. Even if the family member is eventually considered the appropriate substitute decision-maker, she cannot consent to hospitalization if the parent objects.

A health-care practitioner can no longer assume that a spouse or family member who accompanies an incapacitated or underage person is entitled to consent for the patient without first finding out if anyone else with a higher authority than the companion has been appointed under the bill.

The concepts of advance directives and expressed wishes also present difficulties. We strongly support the concepts, but how does a practitioner determine in all circumstances, with any degree of certainty, whether a particular directive is the correct or valid one, before treatment can commence?

Let me give you another example. While on a business trip you suffer serious but treatable injuries in a car accident. You are unconscious when you arrive at the hospital and no family members can be located immediately. In your

wallet, the nurse's aide finds a card stating that you are terminally ill and do not wish to be kept alive through extraordinary measures.

What do you want the practitioner to do? Assume this directive applies to all treatment and stand back? Call in the advocate? Or would you prefer that the practitioner be allowed to exercise reasonable doubts and treat you on the assumption that this only applies to your terminal illness?

Front-line health-care practitioners confront situations like this frequently. Any legislation governing consent in these circumstances must allow the system to err on the side of the patient, not the process.

**Mr Nambiar:** I was appointed to the council as a public member six years ago and as president of the organization of South Asian Canadians, I have gained considerable experience advocating for individual and community interests.

The minister has expressed interest in the college's views on providing specific penalties for contravention of section 4, the clause which prohibits treatment without proper consent.

In our experience as a regulatory body, we have found that patients are more at risk in situations where the expectations and rules are unclear or misunderstood, or where there is uncertainty as to which member of the health care team has the ultimate responsibility for patient care in a given situation.

Unfortunately this bill is an example of all these factors. The rules are confusing. All the onus for initiating those rules rests with an individual practitioner with no provision for assistance, delegation or a change in the primary care giver. In addition, the bill sets out arbitrary, inflexible and conflicting demands on practitioners with little thought as to how the health care worker is to proceed if the system is working to the detriment of the patient.

Let's take another look at Dr Edney's first example. She was confronted by a patient who may or may not need emergency care. She cannot make that determination because she cannot diagnose without consent. She is unable to obtain that consent because the patient is incapable and the advocate process must be followed. It is the college's job to issue explanatory directives to physicians on compliance with the law. How are we to advise them in this case? What are the government's intentions?

Dr Edney may suspect, but cannot confirm the patient's need for urgent care. How long must she wait until the advocate process is completed? Does she proceed without the advocate on the assumption that this is an emergency? If she does proceed and it turns out the woman is merely intoxicated, then she has broken this law and is subject to penalty. If she does not begin care and the woman dies, she is also in breach of her professional responsibilities. Or instead, does she pretend the woman is capable, to try and solve the dilemma?

The minister said she hopes common sense will prevail. We agree. But we cannot advise physicians to use common sense in direct contravention of specific legislation. We urge the committee members, especially in clause-by-clause debate, to be aware of this while amending these bills.

Let us look at a recent real life example. A physician in an emergency ward examines a woman in serious but



treatable condition from a car accident. In her wallet is a card stating that the bearer is a Jehovah's Witness who would refuse a blood transfusion. It is signed, but it is undated and unwitnessed. No one else is immediately available to validate this advance directive. The physician is in doubt but chooses to err on the side of saving the patient's life. The woman recovers and successfully sues the doctor for battery. In your kit you will find a copy of the notice we sent to the profession in the wake of that decision.

This example illustrates several points. It demonstrates how the current common law works and highlights the need to clarify the rules, but it also shows the dilemma practitioners find themselves in on a frequent basis. There will always be a significant number of situations of legitimate but inevitable uncertainty. Until this legislation creates a system where practitioners can determine, with some degree of certainty, who wishes to refuse treatment and who does not, then rigorous enforcement provisions will not result in better patient care. Instead, it will create the medical equivalent of libel chill.

Physicians are prepared to accept limitations placed on treatment by capable, consenting patients or substitute decision-makers, but they should not be asked to function in situations where limitations on treatment, of potential harm to patients, occur because of flaws in the system. As a minimum, patients should expect that their options for care will be preserved until uncertainties about consent are sorted out.

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**Dr Morrison:** In closing, I would like to reiterate our belief that a patient's right to choose is a fundamental principle of health care. We support the government's efforts to define a better mechanism to protect and enhance this right, but the minister has also asked your committee to come forward with a "commonsense consensus." The advice should be well taken by all of us who are participating in this hearing, because if we cannot work together to discover that consensus point, it will not be the government or the practitioners or the institutions that will suffer; it will be the patients. We look forward to any questions you may have.

**The Chair:** I would just like to advise the committee that the clock is not working. We have about five minutes for each caucus.

**Mr Poirier:** It is as good at advice as Bill 109, I guess. Yes, I got consent ahead of time to have five minutes.

Dr Edney, as you were describing your first example, I was putting myself in your shoes. Being one of the members for Ottawa-Carleton, where we have an interesting situation with meningitis, it is very apropos and right up to par to use this as a very vivid example.

I am sure you have spent a lot of time with this, consulting among yourselves. We could spend a lot of time asking you questions about that, but at this point I would like to hear from the parliamentary assistant if the government or the different ministries or himself or somebody else will respond specifically to the fears that have been brought forward by the college here today, or at other

times they have come forward. Could I get a response from the PA, please?

**Mr Malkowski:** I would like to refer this to Paul Wessenger, who is the PA to the Minister of Health.

**Mr Wessenger:** As far as the specifics are concerned, I think there are some misconceptions in the brief, particularly with respect to the question of age. I will deal with that first of all.

If a person under 16 does not demonstrate a wish to make the treatment decision, there is no assessment of capacity and the parent or other person who has custody of that person makes the treatment decision, but if a person under 16 demonstrates a wish to make a treatment decision, then the health practitioner makes the determination whether that person has the capacity, and if that person has the capacity, the health practitioner can proceed to treat. It is only in the case where the person under 16 demonstrates a wish to make a treatment decision and the practitioner determines the child is mentally incapable that you have to have the advocate come in. I think we needed that clarification.

With respect to the specific question concerning the meningitis situation—

**Mr Poirier:** Yes, especially that first case.

**Mr Wessenger:** —I will probably ask counsel to refer to that. I think they would be more cognizant with respect to the matter of the interpretation of law and give a better answer to it legally than I would be able to do give.

**Ms Bentivegna:** It comes down to the fact that to act without consent, the practitioner has to be of the opinion that the person is incapable and that there is not time to find a substitute and that the patient before him will suffer serious bodily harm. Then the practitioner can proceed, but it is still up to the practitioner to make that determination, that he is dealing with a situation that will lead to serious bodily harm. The bill leaves it up to the practitioner, does not want to tie the practitioner's hands, in order to provide the patient with treatment if it is an emergency situation, but if it is not, then it sets out the process as to how that person's right to make the decision is taken away and how the substitute decision is made.

**Mr Poirier:** In everyday language, you are telling me that in the two examples brought forward in their brief they have nothing to worry about, because if they have a doubt or they cannot proceed the way the bill says, they are in their full right to proceed with emergency treatment as if they had consent or whatever. Is that what I am hearing from you?

**Ms Bentivegna:** What I am saying is that if that practitioner believes he has an emergency situation on his hands—not what is now under common law as a threat to limb or vital organ or a threat to life; it is a broader definition—then he can act. If diagnosis is needed because they believe it might be an emergency, then that would include that too.

**Mr J. Wilson:** But you have the cart before the horse. The point that needs to be answered is that diagnosis is considered part of the definition here. That is what needs to be cleared up.

**Mr Poirier:** That is right.

**Mr Sterling:** Why don't we just take it out?

**Mr J. Wilson:** The example was fairly clear. The diagnosis would have to be done to determine whether it is an emergency or not. The counsel has just said that. Why do we not clear up the definition and not have these debates every day?

**Mr Poirier:** Exactly. How would the doctor be able to defend herself or himself? If they say, "I felt there was an emergency situation," how could they say that if they did not make a diagnosis?

**Ms Bentivegna:** There is also the fact that there is different capacity needed for different things. There is very little capacity needed in order to agree to speak to someone or to give him information if you are able to. Now, someone may be so incapable that he cannot give that information, so again the practitioner would not have anything to go on. That would be difficult. It is a difficult situation. But there are different levels of capacity that may be needed for the different steps of what may happen.

**Mr Poirier:** Particularly to those two very specific and very real examples, what would you tell these doctors to do? What would you say they can do so they could go to bed that night and not have to worry about it tomorrow or the next day? What would you tell them?

**Ms Bentivegna:** The bill sets out that if the doctors believe they have acted in accordance with the bill—if they had a belief it was an emergency and they acted accordingly—then they are protected. In the case of, let's say, the 15-year-old who goes in for birth control, if they believe that young person is capable, then they can deal with that young person. There is no need to call in an advocate.

**Mr Poirier:** Including a blood transfusion for religious purposes?

**Mr Bentivegna:** With the blood transfusion, as the *Malette v Shulman* case stated, if there is an advance directive, even in an emergency situation that has to be respected. The bill states in section 23 that the practitioner has to have reasonable grounds to believe there is such an advance directive. Where practitioners are acting on a substitute's consent as to what the advance directive was, they have to rely on that substitute to have properly interpreted that advance directive and to be applying it. It would not be the practitioner who has the responsibility in that case where they are relying on substitute consent.

**Mr Poirier:** Would you react to that, please?

**Dr Dixon:** If I may, with respect to the issue of emergency care, not only is a practitioner in difficulty in that he or she cannot examine the patient because consent has not yet been granted, but the practitioner has to make a determination, not whether there is an emergency but whether "the person is likely to suffer serious bodily harm within 12 hours if the treatment is not administered." That is a very difficult call for any practitioner to make. Besides, the process may start before 12 hours, but the effects may not be visible and may not become manifest until some time later. This is quite a different definition and test than is currently in existence under the Public Hospitals Act.

**Mr Wessenger:** Could I just respond to that? I think it has been made quite clear by the minister that one of the items being considered for deletion from the legislation is the "within 12 hours." I think it has been indicated pretty clearly by the minister that this is an item that is likely to be cleared up.

**Mr Poirier:** You mean to tell me you are considering amendments?

**Mr Wessenger:** I am just saying it has been made very clear by the minister that she recognizes that as a valid—

**Mr J. Wilson:** What are we supposed to do, remember every wish of the minister? Why do you not put this stuff in writing so we do not have to debate this stuff over and over again?

**Mr Wessenger:** If I might point out, it was indicated by the minister in her statement to this committee. Read her statement that said the 12 hours should be deleted.

**Mr J. Wilson:** Bring it in as an amendment.

**Mr Fletcher:** Read Hansard. Do your homework.

**Mr J. Wilson:** Bring it in as an amendment like you normally would.

**Mr Sterling:** Could I ask the parliamentary assistant what the sense is of keeping in the definition of "treatment" under section 1 of Bill 109, the diagnostic part of it? Why is that included in the treatment section?

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**Mr Wessenger:** Obviously a diagnostic procedure can include a number of tests and a number of very intrusive steps that can be taken with respect to an individual. That is why it is included, the term "diagnosis." Diagnosis does not just mean looking at a person and making a guess as what his sickness is. It involves doing all the necessary steps, tests, etc. that are required to establish what the illness is that requires the treatment.

In the individual situation, as I think was indicated by counsel, it is the medical person's judgement as to the situation. If the medical person determines in the situation that there is a risk of meningitis, then the medical practitioner would be justified in taking whatever steps are necessary on an emergency basis to deal with that situation.

**Mr Sterling:** Are you suggesting that within diagnostic tests then, there could be some harm to the patient?

**Mr Wessenger:** It is not a question of harm to the patient. I think it is really a question of the patient having the right to determine what is appropriate treatment. Of course, we have the override of what in an emergency situation is appropriate treatment.

I would like to say also that I am quite confident the medical profession would use common sense in interpreting this legislation, just as they use common sense in interpreting the common-law situation. The fact is that this act is more or less a codification of the common law and in many cases allows for a process of providing treatment on a lesser standard perhaps than the common law would provide. It would provide ways of doing treatment which the common law does not provide. What we are attempting to



do here is provide a more effective way of treating patients than the common-law situation.

**Mr Sterling:** I understand that we want to give a patient the right to refuse treatment, but we are dealing here with specific circumstances where somebody cannot answer for himself. I do not understand why it is wrong to give the medical practitioner the right to diagnose without consent? What is wrong with it? To diagnose, to determine: What is wrong with it?

**Mr Wessinger:** Perhaps I will refer this to legal counsel. I had better leave it to legal counsel because my comment would be that diagnosing by itself is not necessarily treatment, but there may be steps necessary to diagnose that would involve treatment.

**Ms Bentivegna:** The reason there is a broad definition of "treatment" to include "diagnosis" is that there may also be different types of diagnosis or tests that may be suggested, and a person may want to undergo some and not undergo others. That is always a person's choice.

Now, when one is dealing with an incapable person, that person may already have a guardian or may have been incapable—there will not be a new finding of incapacity under the Consent to Treatment Act—so then it will be the guardian who will be making the decisions once he or she gets the information as to what is needed and what the alternatives are. If this is the first time the incapable person comes up for medical service, this process will start then. But again the premise of the legislation is that you need someone to receive the information or what is being proposed, whether it is a diagnostic test or whether it is a treatment, and then that person can say on the incapable person's behalf, "Yes, that is fine," or "No," either they did not want it or do not feel it is in their best interests, if there are not advanced directives.

**Mr Sterling:** This goes to the amount of distrust that we are placing in our medical profession in this province. If you cannot give them this much trust, then what can you give them? It is absolutely amazing that a government in trying to protect its people will go to these lengths and distrust its professionals to this degree. I just find it abhorrent.

**Mr J. Wilson:** Along that line, perhaps I could have a frank comment from the College of Physicians and Surgeons. What is the common ground here? You mentioned in your brief that you do not feel the status quo is the way to go. You may agree with us that we feel this really shows a lack of trust in the traditional role of the physician, so where is the common ground? I know you are going to introduce amendments later, which is better than the government has done to date. Dr Dixon, do you have any general comments on behalf of the college?

**Dr Dixon:** I think with respect to the basic issue, we clearly have said that we support the basic right of a patient to consent or for someone to consent on the patient's behalf. We do not want to jeopardize the patient's options by introducing a system which in essence is possibly going to take away that right by simply allowing the patient's health situation to deteriorate while the consent process takes its course. Surely a practitioner should have the authority to undertake at least a non-invasive assessment of a patient to

determine what the problem is so there can be some assessment of the urgency. If diagnosis is so inclusive that the patient cannot even be examined by the practitioner—I can understand not wanting to authorize invasive diagnostic procedures which carry a risk, but surely a physical diagnosis of the patient and some pretty basic tests which might be undertaken in an emergency department to determine the urgency of the situation would not be unreasonable.

**Mr Curling:** Maybe the parliamentary assistant could clarify this. Earlier we asked if there were any amendments. I heard a remark that we would know if we had read the minister's statement to the committee where she emphasized that there are amendments coming. Earlier today they said there would be no amendments whatsoever until after the hearings. I just want to know.

**The Chair:** I believe Mr Wessinger said there would be clarifications on the 12-hour issue. He did not say there would be amendments, but clarifications.

**Mr Curling:** Which will come in the form of amendments?

**The Chair:** Possibly; possibly not.

**Mr Curling:** I just want to understand.

**Mr Winner:** I frankly do not share the same concern the members of the opposition have with regard to section 22 because I would suggest that the reasonable test would have to apply here. In fact, the word "reasonably" appears in clause 22(1)(c). Are we not dealing with the same kind of situation we have any time a physician has to make a decision? Once we look back on that decision in hindsight, are we not in a situation where we demand the same standard of competence that a physician would be expected to exercise in light of a similar standard of competence that is demonstrated by the physician's peers?

Here we have a lead-in that says if the health practitioner is of the opinion; if that opinion is a reasonable one to take under the circumstances, I suggest that the kind of invasive diagnostic procedures you are concerned might not be available in this situation would not be necessary in the majority of cases. Perhaps you could comment on that.

**Dr Morrison:** The diagnosis in the particular case of meningitis is not an academic theory. If you are presented with a case of bacterial meningitis and it is more than an hour after the patient arrives in emergency, you may well have caused some deterioration in his chance of a successful recovery, so the particular case represents an area where diagnosis and an invasive procedure, a lumbar puncture, is desirable and essential.

As to a reasonable decision, Dr Dixon has already said that as we read the present legislation, we do not think we are entitled to go ahead and make that diagnosis. That is our interpretation. I would also respond to an earlier comment that in this legislation there may be some distrust of our professional integrity or professional responsibility. I would like to emphasize that we, and not only physicians but other health care workers, nurses and others, are patients' advocates as well, so we do have the patients' interests at heart. It probably should be considered as part of this legislation as well.

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**Mr Wessenger:** I would just like your confirmation: You would like to see some wording changes in section 22 of the act, the emergency provisions, is that correct? Is it fair to say you would be in agreement with deletion of the 12-hour time frame as one of those changes? If there are any other changes you would suggest, I would certainly—

**Dr Dixon:** That would be one change, but we certainly have to clarify the authority of a physician to assess a patient without consent in a situation where the condition of the patient is unknown. Physicians working in emergency departments are frequently confronted with patients they have never seen before, and if they do not have the authority to take an initial assessment of the patient, they cannot possibly determine whether the patient is an emergency or whether he needs any supportive care until the advocate and consent process has been fulfilled. Do you want patients to lie in emergency departments waiting for the advocate and for the substitute consent person to come when they are in pain, when they need fluids, when they need suction? All these things are precluded by this legislation.

**Mr Wessenger:** Again, I would like to refer you to the minister's comments that she has come to the conclusion that treatment necessary to alleviate severe pain should be permitted in the emergency treatment. Besides the 12-hour time frame she has also indicated that the legislation should be amended to extend the 72-hour time period where no substitute decision-maker is available. So those are three indications. I certainly would be interested specifically in hearing from you on any other specific recommendations you could make with respect to this section. I am just asking you. I realize you may not have—

**Dr Dixon:** Notwithstanding the legal counsel's comments with respect to section 10, subsection 10(7) makes reference to the fact that the section pertaining to the role of the advocate applies also "if the person is less than 16 years of age and has demonstrated a wish to give or refuse consent." Our legal advice is that in fact it does require an advocate to consult with any patient under 16 years of age who indicates a desire to consent on his own behalf and is deemed capable by the practitioner to be able to consent.

**The Chair:** Dr Morrison, Dr Edney, Mr Nambiar and Dr Dixon, I would like to thank you on behalf of the committee for appearing here today.

**Mr Nambiar:** May I make just one small comment, please? The new Regulated Health Professions Act is going to place greater onus on laypeople like myself to see how the legislation is followed. It may be all right for all these doctors, as they are now in the majority sitting on the complaints committee, to say that particular practitioner did what any ordinary doctor would do, but in the new legislation a little less than half will be laypeople, and they would have difficulty exercising judgement. If a case like this comes up, we will not look at things in hindsight. We will say, "Why did you do it when the legislation was very clear?" This is something you have to bear in mind.

ALZHEIMER SOCIETY  
FOR METROPOLITAN TORONTO

**The Chair:** Our next presenter will be from the Alzheimer Society for Metropolitan Toronto. Could you please introduce yourself for the record and then proceed.

**Mr Ignatieff:** My name is Andrew Ignatieff. I am a board member of the Alzheimer Society for Metropolitan Toronto and a member of our advocacy committee. I would like to lead off by introducing our society. We are the first community-based agency anywhere in the world to specifically address the problems of persons with Alzheimer's disease and related disorders. As health care professionals, but most particularly people with direct experience in family-centred care for persons with Alzheimer's disease, we work in several different ways within the context of the home and the community to provide support to the victims of Alzheimer's disease and their families.

These include a telephone counselling service for family members, care givers and concerned community residents about the symptoms, care and treatment of Alzheimer's disease and a unique and far-reaching resource centre, including books, periodicals, videos and films on Alzheimer's disease, its care and treatment. We also provide a number of information events and advocacy initiatives in support of persons with Alzheimer's disease in the community. I appreciate the opportunity to speak on behalf of the Metropolitan Toronto society because I know you will be hearing later on from the Ontario society.

I want to speak to you today from the viewpoint of a care giver. My mother, my grandmother and my great-grandmother all had Alzheimer's disease, so I am very familiar with the situation and believe that as a care giver I have something to offer this process.

What we do as an agency reflects the current government's commitment to the long-term care redirection in that we believe in promoting respect for vulnerable members of the community, support for care givers, maximizing opportunities for community-based care and appropriate delay in institutionalization.

What we would like to talk to you about today is specifically the three bills, Bill 74 on advocacy services for vulnerable persons, Bill 108 on substitute decision-making and Bill 109 on consent to treatment. While we are grateful for the implicit recognition of persons with Alzheimer's disease as vulnerable members of the community within the context of the current bills, we have some specific concerns about the impact of this far-reaching legislation on persons with Alzheimer's disease, their families, care givers and supporters in the community.

All three bills imply a level of state intervention in the care of vulnerable persons which we believe is incompatible with the stated principles of the long-term care redirection. As persons with experience who have worked with persons with Alzheimer's disease, we believe this care should remain the primary responsibility of the family, the care givers and the community-based support network and not require constant intervention by the state.

I do not think anybody can live in Ontario at the moment and not be aware of the situation of recession and fiscal restraint on the part of the government. Just looking



through the legislation and doing some quick calculations, we became aware of the high cost the proposed program would imply. We think these resources could be much more effectively used to support the existing networks out in the community, rather than imposing a new level of bureaucracy on people who are already working on behalf of vulnerable people in the community.

In the area of the proposed Advocacy Commission, we would urge you to allow representatives of the Alzheimer society and other organizations that work on behalf of vulnerable persons to be members of the proposed Advocacy Commission. While we are enthusiastic about the recommendation that the majority of places be given to vulnerable persons and persons with disabilities, we believe there is a role for organizations such as ours to participate. We who have shared the experience of Alzheimer's disease have something to say in this decision-making process and we would like to be included.

As part of our preparation for this submission, the Alzheimer Society for Metropolitan Toronto underwent a process of education and learning and consultation. We consulted with lawyers, professionals and other people out in the community with shared interests, and we realized the complexity of this legislation. We have no lawyers and no professionals; we are care givers. We believe fundamentally in the importance of a broad-based education program related to the implications and the impact of this legislation on the day-to-day lives of vulnerable people, their care givers and supporters out in the community. We urge you that when the legislation is passed, instead of spending money on newspaper advertisements, pamphlets and brochures, you provide support to community-based agencies to support you in your education efforts.

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One of our concerns relates to the issue of universality of application of the proposed legislation. I come from a background of community social service. I have extensive experience in the empowerment of individuals and community groups. My concern about this legislation is that it is profoundly disempowering to families. It takes away their responsibility for their loved ones, their friends and care givers. Families are there, ready to do the work, to provide the support. They need advice; they need support. They do not need an adversarial relationship with the proposed advocates.

A particular area of concern relates to the question of intake into the advocate process. The proposed moment is when the vulnerable person seeks the support and advice of an outside person to come into the increasing situation of vulnerability he or she faces.

When I was reading this legislation and we were discussing it in the Alzheimer society, I looked back at my own experience and tried to place at what moment this would have happened to us. In the case of Alzheimer's disease, it is not a single factor. It is a combination of neurological, social and physical symptoms that take place all at the same time. At that point when my mother, in this case, would have sought the support of an advocate, she was feeling extremely vulnerable. She was subject to periods of extreme physical violence and verbal abuse, her

judgement was severely impaired and her ability to comprehend the implications of her actions was severely reduced. I should also say that as her family members, our ability for judgement at that moment was also severely put to the test in our day-to-day relations with her and our ability to provide her with care.

Our concern with this intake procedure is that once initiated, it cannot be reversed. A judgement is made on a family, on an individual, at a time of particular vulnerability and difficulty.

We would really urge you to review the criteria for intake and we would recommend that advocates intervene in an Alzheimer's care relationship only if the following conditions exist: if the Alzheimer patient has no family care giver; if the Alzheimer patient indicates the wish for an advocate prior to the onset of significant symptoms of the disease; if the family care giver indicates the need for an advocate; if a third party in the family or community has reason to believe that problems exist in the Alzheimer care relationship requiring advocate intervention.

Our whole work in the Alzheimer Society for Metropolitan Toronto is based on the principle that the family care giver is the most qualified person to make decisions and take action in the care of the Alzheimer patient. That family care giver may require information, support, counselling and direction, but ultimately he is the only one who can, should and must make the difficult decisions.

All three bills before you emphasize government actions implying intervention in the decision-making process around care, treatment and property of vulnerable persons. By their very nature, these state interventions disempower the family care givers and tread on the tenuous bonds of commitment in the Alzheimer care relationship.

As someone intimately involved in an Alzheimer care relationship, I have serious concerns about the presence of an uninformed advocate hanging over my every thought, decision and action as I make my way through the complex web of relationships with my mother, my family, my friends and supporters, the nursing home, banking system, legal profession and municipal, provincial and federal government authorities who see to her situation.

I have serious concerns about the prevailing use of unknown professional advocates with sweeping powers, heavy demands on their time, unclear qualifications and little accountability. Anyone who has been through an Alzheimer's care relationship will have very clear understanding of accountability, having had to deal on a daily basis with doctors, nurses, public health authorities, nursing home operators, bank managers, lawyers, notaries, public trustee's office etc.

Who are these new advocates? What will their accountability be based on? What rights and responsibilities will remain for us, the family care givers in the Alzheimer's care relationship?

All three pieces of legislation relegate family members to a marginal role in the proposed arrangements for vulnerable persons. As examples, Bills 108 and 109 do not make notification of family a priority during the process of assessment of capacity of the vulnerable person. In the case of persons with Alzheimer's disease, this is especially



remarkable, as the vulnerable person with significant cognitive impairment is notified before the family members most responsible for his or her direct care.

We therefore urge you to ensure that the proposed Advocacy Commission define, impose and implement very clear guidelines regarding the qualifications, training, supervision and lines of authority and accountability of the proposed advocates for the vulnerable members of our community.

Lastly, I would like to talk about the question of research. The Alzheimer Society of Metropolitan Toronto focuses its work on the family care relationship and we leave it to other levels of our organization to deal with the research question, but we have some concerns as people directly affected by this legislation.

We advocate very strongly on behalf of protection of people with Alzheimer's disease from unnecessary participation in intrusive research. However, we would be very concerned about any effort to impede research into this terrible disease, especially at this point, when research has led us so close to a solution, an understanding of this disease and possible treatment of it. Anything we do now is basically only palliative care. The research we have so close at hand puts us in the position of prevention of, if not a cure for Alzheimer's disease.

We would therefore urge you to consider those aspects of the proposed legislation which could inhibit and actually prohibit effective research into appropriate care and the eventual cure of Alzheimer's disease. Specifically, provincial courts should be empowered by the legislation to authorize guardians of persons with Alzheimer's disease to provide substitute consent for participation in non-intrusive research.

**Mr Poirier:** Last summer my father was diagnosed with Alzheimer's. I have been a care giver at times and I also know what it is like.

You claimed earlier on that the proposed legislation is "disempowering," if I remember the proper word you used, for the family. I know that we have to read rather quickly, and as we say in French, at a glance, sideways, as we are going through this. Some of the explanations that were given to us earlier claim otherwise from the bill. I almost put in brackets "of course," but then it is always sad to see, no matter who is in government, that a proposed bill is perceived very differently, and people come forward and are very concerned about a particular bill. No matter which bill, no matter who, people feel this way.

I wanted to know, have you had a response from the government pertaining to the specific fears that you and the Alzheimer society have brought forward?

**Mr Ignatieff:** No, we have not. The thing I should say about the question of disempowerment, having been through this experience now for five years actively involved in the care-giving relationship and 10 years since diagnosis of my mother, is that I believe very firmly that families should assume responsibility. We fight daily to encourage families to take on this responsibility. It has been a transfiguring experience of my life. It is a responsibility that you take on, and you have to be prepared to assume all aspects of that relationship. But it is an empowering relation-

ship because it gives you the ability to do something in the face of a disease which denies you any ability to cope. I think that one of the ways you empower yourself is when you face a very difficult, if not impossible, situation and you find the best solution because you have known this person all of your life. You know all their history, a lot of their characteristics and the potential of this individual. You know your own potential and the potential of your family. Especially in these hard economic times, it is very important that families assume responsibility for their own kind and take action where possible.

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**Mr Poirier:** Including at a time where the decision may be made to put that person in a nursing home, for example. Even afterwards also, including the power of attorney type of power to decide for that person with Alzheimer's, right?

**Mr Ignatieff:** That is right.

**Mr Poirier:** I understood correctly?

**Mr Ignatieff:** That is one of the most difficult decisions you have to make. The problem when you enter into an Alzheimer care relationship is that you lose all sense of perspective and you do not realize how hard it will become in caring for the multiplicity of symptoms. Therefore, I think it is really important that the people who are going through this process make the decision based on knowledge and understanding of the situation and the resources that are available to them, and not have someone else make the decision for them.

**Mr Poirier:** You are genuinely afraid that the advocates will tread on the legislative power that family members legally have or should have, or morally should have, to take care of an Alzheimer member of the family.

**Mr Ignatieff:** I have been dealing for five years, Mr Poirier, with representatives of banks, with lawyers and with chartered accountants and at every single instance my judgement has been put to the test. It has been doubted by someone I have never met before, who says that he knows much better than I how to care for my mother.

When I see this legislation, I just see this as another opportunity for someone to intervene and take away my responsibility, and to do something I probably know how to do better than they do. The question I have is why this relationship cannot be one of support to my decision-making ability, as opposed to this adversarial relationship, where someone who has a very heavy case load will say, "Okay, I can give three minutes of my time to Mr Ignatieff's case today."

**Mr Poirier:** Sometimes I feel you are speaking on your personal behalf.

**Mr Ignatieff:** I am speaking on behalf of the Alzheimer Society for Metropolitan Toronto.

**Mr Poirier:** Are you aware if other Alzheimer societies have the same type of fear the one in Toronto has?

**Mr Ignatieff:** You will be hearing from the Ontario society later on. We have differences of opinion on this legislation. We are much more supportive of the legislation than they are.



**Mr J. Wilson:** If you are supportive, somebody is in trouble here.

**Mr Ignatieff:** That is right. But we believe there are elements of this legislation that are worthwhile keeping and that should be supported. I cannot speak on behalf of the other Alzheimer societies.

**Mr Poirier:** Fair enough. Will the government be responding to the specific points brought forward by the Alzheimer society?

**Mr Wessinger:** I have a question for Mr Ignatieff which I hope will clarify the situation. Thank you for your presentation. I have a certain perception about how this legislation is going to work. My perception is somewhat different than your perception. I will just give you my perception of how it would work and you tell me where I am wrong.

It would seem to me that Bill 108 in particular is of great advantage to people in the Alzheimer situation. First, it allows the patients while they are competent, by power of attorney, to specify what treatment they should have, and then once they become incompetent, have incapacity, that power of attorney can be validated. Second, we have a much more streamlined procedure with respect to guardianship under Bill 108 than we have under the committee-situation.

To me—tell me where I am wrong—it would seem that once you have an Alzheimer patient who lacks capacity, either a validated power of attorney could come into effect or a guardian could be appointed. In that event, an advocate would have no role whatsoever. The advocate would be completely eliminated with respect to the whole question of the Alzheimer patient. As for the person appointed, I assume a member of the family would be the normal person who would have the first opportunity to be appointed as a guardian for the patient.

In light of that, I am unable to understand your concerns, because it would seem to me that this is going to be an advantage in dealing with the Alzheimer's patient. It allows the family member to be appointed guardian, it allows the family member to avoid the advocacy situation. Maybe you would clarify that for us.

**Mr Ignatieff:** Speaking from my own experience, a comparable situation happened when my family was asked to participate in a research project sponsored by Sunnybrook Medical Center in adequate care for people with Alzheimer's disease and the doctor visited us for the first time. During that interview my mother kept on pointing at my father and me and saying that she was being kept under lock and key in the house and that they were after all her possessions and that she felt threatened all the time. Although my father denied it and wept at the time, the doctor had no way of knowing whether this was true or not.

That is the question I have. When someone is brought in from the outside who is not familiar with all the situation and the Alzheimer's person is fully capable of cogent speech but not capable of cogent thought at times and proceeds to tell a story which is completely at variance with reality, my concern is that judgements are made by that external authority based on very incomplete information.

The other question I have is that in the case of my mother, at what point is the person diagnosed? At what point does that person call in an advocate? My mother would never have called in an advocate, although she felt threatened. She just simply would not have. It would not have occurred to her, and by the time we were seeking the support of outside people, she was no longer capable of making decisions.

It is not a disease where at one point you say, "Oh, this person has Alzheimer's disease." In fact, the only way for true diagnosis is through autopsy after death. So it is very difficult to say at what point the diagnosis is made and whether the person has had it for a long time before. It is, as I say, a sliding scale.

**Mr Wessinger:** Perhaps I could just follow that up, because what you are saying is that for an ordinary health practitioner you feel it is very difficult to make an assessment of capacity or incapacity with respect to the Alzheimer's patient in the early stages of the disease. Obviously it is very easy in the latter stages to do that. What about the position of a psychologist? Are they, in your opinion, able to properly assess the capacity or incapacity with respect to an Alzheimer's patient?

**Mr Ignatieff:** Just to give you an example, my mother is an artist and did all the planning in our house when I was growing up. So when she was being tested by the psychologist, the psychologist would appear and my mother would say: "Oh, you want me to draw the clock, don't you? Oh, you want me to draw the circle." She was able to do all that and was able to carry on a conversation although she already showed signs of severe impairment in other areas. It was not until they had a whole range of very sophisticated, neurological tests done on her that they could prove that she was severely impaired, because her training as an artist and as an accomplished woman was such that she could carry herself and fool the psychologists.

**Mr Winninger:** As Mr Wessinger said, let's say for the sake of argument that you held a power of attorney for your mother's care or that you were a court appointed guardian for your mother's care. Your approach seems to be premised on one of conflict. You may be totally self-sufficient in terms of providing care for your mother. There may, however, be other care givers for Alzheimer's victims who might rely on the kind of intervention an advocate can provide. There may be care givers who may benefit from that kind of support, community support if you will. This is the kind of situation where you need not be in conflict with an advocate but where the advocate can provide a supportive role. Then of course there are situations where there is no attorney named, where there is no court appointed guardian, and these are the kinds of vulnerable people who may benefit most from the role of the advocate.

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**Mr Ignatieff:** This is what I was trying to get at when I was addressing the question of universality. I recognize there are people in the community who do need the support of an advocate. I am just concerned that the starting point of the legislation is that everybody is in need of an advocate, and consequently that supports which exist for certain



members of the community are not recognized and then supported and enhanced. That is my only response to that.

**Mr Sterling:** You echo many of my sentiments which were put forward this morning and my concern about the intrusion into the family and its responsibility for care of a person who is close to it. I agree with basically everything you have said. I asked the question this morning of ministry officials, "Is there anything in the acts which would allow a person to exclude an advocate?" I know that at the onset of Alzheimer's there are very lucid moments and that a person who is afflicted with this disease can quite competently give a power of attorney during those lucid moments. Do you think there would be enough protection for the Alzheimer's patient if you said that you were going to draw up a power of attorney dealing with personal care which would exclude an advocate in the future, but make the law subject to the fact that a physician or a health care provider could call in an advocate if he thought it was necessary, if there was a conflict in the interests of the patient and the family? Would that be adequate to meet your needs?

**Mr Ignatieff:** Care givers would welcome any support they could get at any time as long as it was seen as support of and assistance to orientation for resources and needs in the community rather than the advocate assuming responsibility for the family. It is just a way of channelling resources rather than replacing existing supports in the community and family.

**Mr Sterling:** In response to my question, the argument was put forward from the government side that it was necessary to have an advocate even if there was a power of attorney for personal care, that it is necessary for this government to intrude into the family situation in case the family is taking advantage of the incompetent person. That is their argument. I do not buy that this kind of situation arises when a person and a family have gone to the trouble of making a power of attorney, and I do not believe a physician would act to the detriment of a patient if he thought the family was trying to take advantage, notwithstanding the law.

What I am trying to do is say to the people of Ontario, "If you want to draw up a power of attorney and exclude an advocate, you have the right to do it." That is what I would like to be able to do and have my constituents be able to do. If the acceptability of that proposal to the government is subject only to the fact that a physician could call in an advocate, notwithstanding what the power of attorney does, maybe I would accept that as a compromise.

**Mr Ignatieff:** As I said in response to an earlier question, we are supportive of the legislation. I would be concerned about any amendment that would allow for the exclusion of an advocate, because I can see situations where an advocate would be necessary. I just think that guidelines should be established for appropriate use of the advocate in situations where advocates could be used effectively in support of the family and of the vulnerable person.

**Mr Malkowski:** This is just a brief comment. Our government's position is one where we recognize and protect the family's role. We are not trying to take away the

rights or the role of the family. What we are concerned about is the vulnerable person. You have to see this as a form of empowerment of that vulnerable person. There have been stories and histories where families have not always provided the right kind of care, and there are people out there who do not have families. What do you do in that situation?

**Mr Ignatieff:** I completely agree, Mr Malkowski, that there are situations where families do not provide the support necessary, and in those cases I think there would be a need for advocates. I am just concerned about potential abuse. When things are codified and put into legislation they are given a power themselves that can be abused. That is my only concern.

**The Chair:** Mr Ignatieff, on behalf of this committee I would like to thank you for taking time out this afternoon and giving your presentation.

#### ONTARIO PSYCHIATRIC SURVIVORS' ALLIANCE

**The Chair:** Our next presenters are from the Ontario Psychiatric Survivors' Alliance. Please come forward. I would like to welcome you here. Could you please identify yourselves for the record and then proceed.

**Mr Milne:** My name is Terry Milne. I am with the Ontario Psychiatric Survivors' Alliance of Ottawa-Carleton. I have brought along two colleagues today. I will let them introduce themselves.

**Mr Pritchard:** I am Randy Pritchard. I am the assistant coordinator of the provincial Ontario Psychiatric Survivors' Alliance.

**Ms Shimrat:** I am Irit Shimrat. I am the coordinator of the Ontario Psychiatric Survivors' Alliance.

**Mr Milne:** I am going to spend a few minutes going over some of the discussions my group had on three of the bills, Bill 74, Bill 108 and Bill 109, on a couple of concerns we had with the legislation as a package and one or two concerns we had with the consultation process. Following that, I am going to get Irit to look at some of the specific concerns we have with the implementation of the advocacy provisions.

The starting point of our talks on this legislation was the fact that advocacy is to serve, in the words of the minister, as a cornerstone for the legislative package. Our primary concern is that as a package its meaning to our community will be determined by the efficacy of advocacy. In other words, in the absence of effective advocacy, we might not see the other parts of that package as that positive for our community.

One of the other concerns was that there is going to be an Advocacy Commission flow out of this legislation, and there is also going to be a competence review board. We had the question, and the question was raised to myself a number of times, about what consumer representation is going to be on that board and commission and whether we will have a voice in the decisions of that commission. It is something that is very important to us.

A third concern for the legislative package as a whole and especially for Bill 109 that I would like to raise later is that there seemed to be a lack of effective sanctions in



some areas. That is something we would like to address and ask why there were not effective sanctions, especially in the case of practitioners who might not respect the wishes of consumers. Also our concern is that as many of the remedies as possible in all the legislation be kept away from the courts and be remedied through the board and commission. Our concern was that courts often cannot be accessed that well by people in our community.

I think it should be fairly obvious that we are quite happy, or certainly very pleased, with a lot of the provisions in the Advocacy Act. Two of the concerns we had are whether advocates would be paid advocates or volunteers. We feel quite strongly there should be a core of well-trained and reasonably paid advocates at the core of the advocacy process rather than just relying exclusively on volunteers, who may not provide an effective advocacy service. The other matter, of course, was training. Is there going to be funding to adequately train and support the advocacy service?

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A further concern with advocacy was whether we would be able to maintain the right of advocates to enter private residences. It became quite obvious to us early on that this was a fairly contentious issue. That is something we would really like to maintain, as a lot of people we represent are in private residences and we feel quite strongly that advocates should have access to private residences.

The final point on advocacy is that advocacy may not be terribly effective in the absence of adequate funding and public information and we wonder what commitment this government has to a public information campaign and to ongoing funding for advocacy. I think that is something Randy is going to address in a bit more detail.

Bill 108: There was a lot of ambivalence from our community around this, and we felt quite strongly. It is a fairly complex piece of legislation and we were not really sure how it would play out in the absence of implementation and court decisions.

A couple of concerns were raised in our discussions. The first was that there was a provision for family members to make decisions based on fairly limited contact with people who they basically did not see on an ongoing basis. In other words, if they had talked to them one or two times in the past year, that would be sufficient contact to make decisions on behalf of those people. A second was that we were quite concerned in terms of who defines "therapeutic" treatment for purposes of substitute decision-makers for personal care when they are consenting to treatment. It was quite strongly stipulated that it would be for therapeutic treatment and we were concerned how "therapeutic" would be defined and who would define what was therapeutic. It seemed to imply a role for practitioners that some of our people had a problem with.

Finally, in substitute decision-making for property matters, there is a provision for management plans to be made by the person making substitute property decisions and a copy of that plan is to be filed with an advocate and with the PGT, but there is no provision we can see for an ongoing reporting to the advocate and we wondered how effectively

the advocate could monitor the substitute decision-maker for property in the absence of that reporting process.

With Bill 109, just a couple of points on it: One concern, and this is probably the strongest concern expressed in all our discussions, was the idea of implied consent talked about in Bill 109. Most of our members brought up that, especially in a hospital setting, implied consent can be something that has a very broad definition and essentially, in the absence of an explicit no to a practitioner, treatment might proceed when it would indeed be against the wishes of a patient.

Two other points were raised. The first is that we would like to see, as I mentioned at the outset, more consumer-survivor involvement in the competency review board. This competency review board's decisions are going to impact our community in quite a large way and we do not see any reason why we should not have some sort of representation on that board.

The final point I would like to make is on the consultation process itself. I wonder how effective a presentation here is in the absence of having some sort of say in the implementation of this act. I think from my point of view, just from reading through this, it becomes quite obvious that how this plays out for our community is going to be decided in a lot of ways after these acts are passed. I just wonder if there is a commitment by the government to involve our community and other communities in the implementation process or whether this and things like this will be our only input into this legislation.

With that, I am going to turn it over to Irit.

**Ms Shimrat:** I would like to thank the committee for the opportunity to present our views on these three pieces of proposed legislation. As survivors of Ontario's current mental health system, our members have a great stake in ensuring that the principles which guided the creation of this legislation are adhered to. We have suffered greatly at the hands of well-intentioned service providers and family members who have blindly accepted the medicalization of what, for many of us, are nothing more than serious social problems, such as overmedication, substandard or no housing, malnutrition and social isolation.

We have witnessed our people being forced to live on the fringe of society by a system geared to ensure our eternal dependence on it. We have had arbitrary limits placed upon our options and our potential and have routinely been coerced into agreeing to treatments that growing evidence suggests may be doing more harm than good. Perhaps more than any other population we looked forward with great hope to this legislation.

Upon our first reading of both the Consent to Treatment Act and the Substitute Decisions Act, we noticed areas that caused major concern for some of our members. We have attached an overview of the proposed legislation by one of our members, which spells out, using personal examples, the main areas of our concern.

Very briefly, our concern about the proposed consent legislation centres on two critical areas:

1. Consent may be expressed or implied, as Terry mentioned. Although we appreciate that implied consent is necessary in dealing with the unconscious victim of an



auto accident, we feel that only expressed, written consent is appropriate for the administering of any psychiatric treatment. Given the potential serious and debilitating side-effects of psychiatric treatment, implied consent leaves the door wide open for the continued practice of gaining our consent through coercion or by omitting to give us all the facts.

2. Lack of enforcement provisions: The law is broken every day under Ontario's Mental Health Act in terms of informed consent and in many other ways. But at least under the OMHA we were afforded the potential remedy of suing our abusers for statutory breach of duty. Although this has never happened, to the best of our knowledge, we were in the process of developing just this type of litigation strategy, which we hoped would begin to force compliance with the Ontario Mental Health Act. If service providers routinely ignored the law with potential penalties in place, what do you imagine will be the situation with no enforcement provisions?

In both these instances the drafters of this legislation have taken a giant step backwards in terms of support for fundamental civil and human rights.

As for the substitute decision-making legislation, it appears to be more of the same. We can still be ruled incompetent to consent to treatment simply by virtue of refusing to accept neuroleptic medications, also known as anti-psychotics, phenothiazines or major tranquilizers, even though the Ontario Court of Appeal recently ruled in the Ried-Gallagher case that it is unconstitutional to force-treat an involuntary patient with neuroleptics due to the potential for extremely dangerous and indeed life-threatening side-effects.

As nervous as we were about these two pieces of legislation, we were prepared to offer qualified support in order to realize the passage of the Advocacy Act. The Advocacy Commission was to be made up largely of representatives of community groups that have fought tirelessly for the rights of vulnerable adults. The commission was to develop guidelines and training criteria for advocates and commence hiring. We depended heavily on this process working in order to ensure we would never have to face another Cedar Glen, the psychiatric boarding house in which resident, Joseph Kendall, died as a result of a beating by the owner.

We were alarmed to hear several weeks ago that the adult protective service workers program was being transferred from the Ministry of Community and Social Services to the Office for Disability Issues under the Minister of Citizenship. It is our understanding that the 20% of the APSW program that currently comes under the heading of advocacy is to be placed under the Advocacy Commission, with its annual budget of \$2 million coming out of the Advocacy Commission budget. On top of this, we see the psychiatric patient advocate office with its entire annual budget of \$4 million being transferred to the commission.

We support the transfer of both of these programs from their current host ministries in order to finally allow them to do their jobs, but we cannot support the notion of having a large portion of what will be our advocate system handed to us without our input as a *fait accompli*. This is in direct conflict with the guiding principles we had counted on to

save vulnerable adults from continued abuse under this new, flawed legislation. We do not forget that it was an APSW who had responsibility for keeping an eye on events at Cedar Glen prior to the death of Joseph Kendall.

We most strongly urge you to get back to the reasons why this legislation was necessary in the first place—the massive, chronic abuse of vulnerable adults in Ontario—and not allow the emasculation of this cornerstone piece of the three bills. Vulnerable adults' quality of life and possibly our very lives depend upon it.

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**Mr Curling:** I really welcome this presentation. As a matter of fact, I think all three bills will address the issue of vulnerable adults in our society. If there is any one group that I would say has been abused, mostly it would be the psychiatric patients whose responsibilities and roles are taken over by other people.

You raise a concern too in saying the rules that are laid down to determine implied consent leave that door wide open for more abuse and could continue to lead to abuses. Do you think the rules government should lay down under this bill should be consistent right across, or that in each community group that needs that kind of protection they could be spelled out? Your group, you had said, needs more stringent rules than the Alzheimer's group or what have you. Do you feel a common rule should be spelled out?

**Mr Pritchard:** I think there has to be a common set of circumstances and criteria straight across the entire system. Listening to the gentleman presenting just before us, I can appreciate that his mother may have caused some embarrassment by the statements she was making. But I would suggest that for every case of a person like his mother, there is an individual who is lodging that kind of complaint where it is valid and where it is real. I do not think we can afford to say that for certain segments of the vulnerable population these rules will apply to it and this segment won't. It has to be across the board or you are going to have this patchwork system with countless thousands falling through the cracks.

**Mr Curling:** So even though the law might be too severe in one instance, you feel it would still be helpful.

**Mr Pritchard:** Absolutely. The extreme cases of abuse that we witness in our community I certainly think exist in all the other subcommunities of those classed as vulnerable adults.

**Mr Curling:** I have another question I would like you to comment on. I think we have reached in this country and this province a reality of cost and money these days. Sometimes we have social needs that are to be addressed and some of us are scared to even approach them lest we may be seen as less humane in our concern for mankind. My concern, though, is that sometimes we are so benevolent in our approach that we make promises and cannot follow through. I think it is more severe for those in need that it is not forthcoming after those promises are made. The cost of this program can be quite enormous, as we hear what advocates should be paid, and the education is very important. I believe in all that type of thing. But do you feel any government at all making these promises can



come through with the kind of funds that are necessary to make this effective?

**Mr Pritchard:** Absolutely. I think that if you do this properly and if you fund this properly, the cost savings this government and the taxpayers of this province are going to realize will be enormous. I would like to give you an example.

We know that if we are talking about the provincial hospital system, the minimum cost per day per bed is \$340. We see that cost escalate to over \$700 in some of our private psychiatric hospitals, per day per patient. We have been suggesting that a reallocation is long overdue. We see the kind of effective examples like the Gerstein Crisis Centre here in Toronto, which for one third of the cost provides the same kind of crisis intervention service with a far better end result, and you do it for a third of the cost. By employing the advocates and making sure they are adequately funded, you are actually talking about a minuscule portion of what is currently spent on psychiatric hospital beds. The cost savings would be enormous and would more than adequately fund this program and return a great number of dollars to the Treasury.

**Mr Curling:** The previous presenter also said that what could be helpful is if some of that money could be transferred to some of the supportive part of the family, and maybe the cost would be less, as a matter of fact, rather than concentrated in a large bureaucracy, large committees and processing. Do you think that kind of distribution of funds would emphasize the importance of the support system of the family, because you empower the family and give it that kind of responsibility? Do you think those points are well taken and that funds should be directed that way too?

**Mr Pritchard:** Absolutely. We have always maintained and always supported that funds have to be available in any reallocation that would allow respite care for family primary care givers. It is an enormous burden on anyone. We have experienced ourselves, when we offer support to each other when we are not doing well, the toll that takes on us personally. If we diverted 10% of the cost of a hospital bed to the wellbeing of that family in terms of additional resources for recreational purposes, whatever, this would be money well spent.

**Mr Curling:** It is difficult to ask you this, because I do not think the government even tried to answer it, but what total amount of funds would be available to make the system work? I do not want to put you on the spot because I could not answer that question.

**Mr Pritchard:** I do not think it is a question of putting us on the spot. We know that the current budgets of 10 provincial psychiatric hospitals is \$800 million annually. We are saying, just to be a little outrageous, close down the 10 hospitals tomorrow morning, take 10% of that, \$80 million, and put it into the community. Allow us to rent houses that we could use as drop-ins for the people who are currently warehoused in psychiatric institutions. Allow us to set up the kinds of mutual support, self-help types of things.

We can do this really cost-effectively. We are throwing away a ton of money. I am not going to put that on the

current government. This is certainly an historical problem. But if we are looking at diminished resources here, we had better look at spending it more wisely. Let us get rid of the things that have historically been proven not to work. Let us talk to the very people who are receiving the services and if they are saying, "Hey, this doesn't work," then do not fund it.

**Ms Shimrat:** Our funders have been doing a study on the efficacy of some OPSA programs in terms of keeping people out of hospital and lessening the use of psychiatrists and of distress lines. We have already had enormous improvements in people's lives with the small amount of time, money and effort that has gone into this so far, so we have a really strong precedent for saying this is going to work.

**Mr Curling:** Having experienced the impact on the deinstitutionalized psychiatric outpatients, not setting up a proper receiving end actually made it worse, as you know and are quite aware. At the initial launching of a program like that, sometimes it costs twice as much to launch while you downsize, close the hospitals and open up smaller areas. I am just pointing that out to you. I am not in disagreement with you that maybe smaller institutions or communities can give better treatment, but I am saying the cost is enormous and the reality hits home at that time.

**Mr Pritchard:** I think that traditional community-based services have been so top-heavy in administrative costs that if we were to move along that line, yes, we are talking about an enormous cost. We are not proposing anything like that. We are proposing very simple answers here.

One of the things that has become clear to us in our travels around the province and meeting with our folks in some 50-odd communities is that we keep hearing the same issues. The issues are, "I live in a crappy place," or: "I live in no place at all. I eat out of garbage cans because I don't have money to buy groceries. My nights and my weekends, there's no one around and I wander the streets getting chased out of coffee shops. Take in a movie? Oh, it'll never happen."

These are our issues. These are the things we are saying are at the root of what the medical profession chooses to call mental illness. It seems to be recognized in every community outside of North America. We have a World Health Organization document that talks about the underlying causes of what we call mental illness as being environmental factors. People need decent lifestyles.

It is far more cost-effective to divert money away from a system that only perpetuates people's dependence and keeps them a perpetual drain on the economy and shift that focus into the community where people can start to gain back some of the self-esteem that has been stolen from them, where people can start to dream again that maybe life can be better than this, where with the support of our peers we can start to re-enter the communities and become viable contributing members and taxpayers. Instead of being a drain on the system, we could be contributors to the system and everyone wins.

1650

**Mr J. Wilson:** Thank you for the presentation. You talk about cost savings. Do you want to take another minute



and explain something to me? I assume you are saying that with advocates in place there would be fewer admissions to psychiatric hospitals, so you would have cost savings there. But in terms of the issues you just outlined as the root causes of mental illness, I am having a little problem figuring out how a \$30-million bureaucracy of advocates is going to solve those issues. I assume you are saying they will be a louder voice out there speaking out and making people aware of the root causes of mental illness.

**Mr Pritchard:** I think not

**Mr J. Wilson:** Maybe I am missing the point.

**Ms Shimrat:** Advocates will be in a position, we hope, to advocate for what people really need. If the doctor is out there saying, "What this person needs is more drugs, more hospitalization," and if the person has an advocate to say, "No, what this person needs is housing," then you get at the root of the problem.

**Mr J. Wilson:** But will there be resources in place?

**Mr Pritchard:** No matter what, we are talking about reallocation and obviously you cannot do what you do not have money to do. There is no doubt about that so there are some tough choices that have to be made, but to maintain the status quo means that you keep sinking millions of dollars every year into something that has proved not to work. By establishing an Advocacy Commission with advocates travelling around the province, we hope to introduce a new perspective into this, a non-medical perspective, where people look at what is happening in people's lives. What we hope will come out of that is that pressure will be brought to bear on every single one of you sitting around this table to start making the tough choices that need to come in terms of a new social contract with the people of this province, where you will be listening to us telling you what it is we need, and you better damn well listen.

**Mr J. Wilson:** But do we need a whole system of bureaucracy to do that at a tremendous cost?

**Mr Pritchard:** That is only one aspect of it. We are currently embroiled in a couple of advocacy projects dealing with psychiatric hospitals which have led to OPP investigations at two sites, where they are looking into almost 60 separate incidents between the two sites. We would hope that a well-funded advocacy program would be going into places and preventing this from happening any more.

I would just like to give you one example that came to us today from the Kingston Psychiatric Hospital. There is a patient there who has a history of being somewhat, what is the word, non-compliant. He likes to complain about treatment that he believes is not very good. Last night, he was asleep in his bed when there was a patient on constant observation. He woke up to see this gentleman reaching over him to go into his stuff. He took the stuff off the patient, sent him away and then stopped to check his goods and realized that there was a lot more missing. He went to a nurse. Together they went to the patient, and another patient who was beside this woke up, jumped up and kicked this gentleman in the chest. This gentleman pushed back. The nurse, because this guy happened to be a complainer, decided that the person who was the victim in this

is going to the quiet room. This patient could not understand that and said, "I am not going to go." So she calls a code on him. Eight male staff came and severely beat the man in the process of putting him in the quiet room and then had the nerve—and this is not an isolated case, we have heard this repeatedly—to have the patient charged with assault, even though he has severe physical injuries, and he currently sits in the Nepean jail.

This kind of stuff, though none of us here in this room wants to admit it, takes place every day, at every psych hospital, whether it is general or provincial. It takes place within our boarding homes, in some group homes, in some community mental health agencies, every day.

**Mr J. Wilson:** Do we know the extent of that, because you say in your brief, "massive abuse of vulnerable adults."

**Mr Pritchard:** We met with Ernie Lightman, whose report is due out, and he identifies, I think, a total of some 600,000 vulnerable adults in Ontario.

**Mr J. Wilson:** Sean O'Sullivan had it up close to a million, but how many are being abused in your opinion?

**Mr Pritchard:** I would think that more are than are not. Let's just look at the psychogeriatric population. Irit had the misfortune of being out at Lakehead Psychiatric Hospital about a month and a half ago and managed to get on to the psychogeriatric unit without the staff on that ward being aware of it. What she found was eight elderly patients severely drugged and tied with sheet restraints to their chairs. No staff in sight. This is standard procedure for our senior citizens who for whatever reason have the misfortune to find themselves entrusted to the care of the state. We have an incredible need for advocates in this province.

**Mr J. Wilson:** Advocates right across the board? We heard the Canadian Bar Association—Ontario today and representatives of the medical profession saying perhaps we could list in regulations cases where advocates would be needed. I can see the case for advocates in the case of psychiatric patients, but it becomes less clear, when many Ontarians receive their primary health care through walking through an emergency ward, whether or not we need an advocate there in all cases of declared incompetence. Any comments on that?

**Mr Pritchard:** Yes. We frequently have reported that if a member presents himself to the emergency ward of a hospital for a medical problem, the moment it becomes known by the medical staff that this person has a psychiatric history, the complaint is invalidated by the medical staff. They say, "This is a nut bar and obviously crazy and we do not have to pay a lot of attention to this." We have seen this over and over again. We have seen people who complain placed on some kind of medication by their family doctor, an anti-depressant, which has a tendency to affect the heart. I know personally of an individual who has suffered permanent coronary damage as a result of this, complaining about it for a six-month period when something could have been done, and it was not done because the person was a psychiatric patient.

If we look at a lot of primary care being given by the family, I believe the family has the best of intentions, but



we have talked to a lot of our people who say that as disgusting as the drugs make them feel, they have agreed to do it because it makes mom feel better. Never mind that they cannot think straight any more. Never mind that they have no hope of ever re-entering the community as full-fledged partners in anything. There is a subtle coercion that takes place and it is not even intentional.

The need for advocates cannot be confined to any particular area. Once you start picking areas to apply it to, you leave all those other areas open to abuse. You cannot do that.

**Mr Milne:** One of the comments that is coming up is a sort of fear that there will be this hierarchy or bureaucracy of advocates. Having seen the figures, and unfortunately I do not have them with me today, that the funding body put out in terms of hospital admissions when people are involved with some sort of self-help model, I cannot imagine any institution more bureaucratic than a psychiatric hospital. If what we are proposing to do can help tear down some of those institutions, I sense we are going to have a lot less bureaucracy in Ontario than we have now. If a relatively small advocacy structure can start to replace rather monolithic, bureaucratic psychiatric hospitals—

**Mr J. Wilson:** My understanding of the role of an advocate is that you are not making decisions; you are simply articulating what the client is telling you. What if the physician says, "No, you are still going to a psych hospital," or, "I do not have a house for you because there is no money in the system"? I do not see how things improve much by advocating. As for making legislators know what the underlying roots of mental illness are, we are bombarded weekly with information on this and an advocate is not going to force me to read it or not read it.

**Mr Pritchard:** I do not think an advocate is going to force anything to happen other than to maybe identify the problem more clearly. You talked earlier about the mess of deinstitutionalization, and in fact it created no additional mess. What it did was bring out into the light of day what was happening to people all along. The fact that the system failed to adjust to the needs of individuals from institutions to the community is the failure of the system.

**Mr J. Wilson:** I think Mr Curling said that. Yes, I agree with that.

**Mr Malkowski:** I just want to respond to your comments. I had two concerns that were identified here as they related to the Advocacy Commission? What does it look like in terms of the process? Would each organization or vulnerable person have to recommend the name of somebody to the Advocacy Commission? Would they then use that approach? Will the Advocacy Commission be involved in making regulations, making decisions and developing the Advocacy Commission? Would you like to see something like that?

Second, related to the APSW, the transfer of that commission to the Ministry of Citizenship, you said you had a bit of a concern about that. In fact, there has not been a decision made on that yet.

Third, the experience you have described relates to the abuse in the institutions. It is very clear, and I think we have to realize that this has been set up, that we want to

include the consumers. That is the point of the Advocacy Act, to empower individuals. I want to congratulate you on your presentation today. It has been very powerful.

**Mr Pritchard:** I would like to speak to the APSW issue first. We understand that it is only rumour at this point. What we do not want to see happen is that we are forced into a reactive position once again. We heard the rumour. We wanted to express our concerns about it right here and right now.

**Mr Malkowski:** I appreciate your feedback. Bringing this feedback to our government is certainly important, something we value.

**Mr Pritchard:** In terms of the establishment of the commission, it was always our understanding that it would largely be rights groups for the elderly and the disabled community that would be putting candidates forth to the government so that we would in fact control the commission, which would do the hiring and set the criteria. Again, we have a concern when we see our advocates being handed to us, possibly in the form of APSWs, even in the form of psychiatric patient advocates. It seems that it is becoming a done deal and we have lost sight of what this was all about.

**Mr Winninger:** Just as one quick point of clarification, you mentioned earlier a situation in which an ex-psychiatric patient may seek emergency care in a hospital and will be discredited, to some extent, because of that past psychiatric history. Practically speaking, without that patient signing a form 14 consent to release psychiatric information, how would the emergency department know, unless the patient avowed the psychiatric history?

**Mr Pritchard:** Let's say that my family doctor has privileges at St Michael's Hospital. I am placed on a psychiatric ward of St Mike's hospital. Because my doctor is from St Mike's, I present myself to the emergency department of St Mike's. My name is punched into the computer. It is automatic. You can duplicate that process at any of the hospitals in any of the towns and cities.

**Mr Winninger:** So you are attending at the same medical facility where you were a patient in the psychiatric—

**Mr Pritchard:** If we look at the smaller communities of Ontario, where that is the only game in town, what is your alternative? To hitchhike 1,000 kilometres away?

**The Chair:** On behalf of the committee I would like to thank Mr Milne, Mr Pritchard and Ms Shimrat for appearing before this committee.

As Mr Harnick is no longer on this committee and he was a member of the subcommittee, I believe Mr Wilson has a motion to make.

**Mr J. Wilson:** Do I move, Mr Chair, that I become a member of the subcommittee?

**The Chair:** That is quite appropriate.

**Mr J. Wilson:** I think that is a conflict of interest if I ever heard one.

**The Chair:** All those in favour? Carried. This committee will adjourn until 9:30 tomorrow morning.

The committee adjourned at 1704.

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First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 11 February 1992

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 11 février 1992

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent



Chair: Mike Cooper  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 11 February 1992

The committee met at 0950 in committee room 1.

### ADVOCACY ACT, 1991, AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Resuming consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

### FAMILY SERVICE ONTARIO (ONTARIO ASSOCIATION OF FAMILY SERVICE AGENCIES)

**The Chair:** I call this meeting of the standing committee on administration of justice to order. Our first presenter will be from Family Service Ontario. Would you please come forward. Good morning. Could you please give your names for the record and then proceed.

**Ms Mayhew:** I am Miriam Mayhew. I am the executive director of Family Service Ontario, and this is Julie Foley who is a member of the advocacy committee at Family Service Ontario and is also the executive director of the family counselling centre in Sarnia.

The Ontario Association of Family Service Agencies is in the process of changing its name to Family Service Ontario and we are going to try and remember to call ourselves by our new name, Family Service Ontario. We represent 48 member family service agencies across Ontario. Our mission is the leadership, reinforcement and support of our member agencies' endeavours to strengthen, preserve and protect personal and family life. Our member agencies provide counselling and support services to individuals and families who request assistance and see at first hand the pressures experienced by people encountering a variety of social problems, including those related to marital and family breakdown and poverty.

All our member agencies provide service to vulnerable adults. Sixteen agencies of the 48 provide specific programs for the developmentally handicapped; 14 provide programs for the elderly. Many of our agencies provide one of the few services, if not the only service for vulnerable adults who do not meet the criteria of other agencies. For example, dually diagnosed adults who are psychiatrically disabled and developmentally handicapped are often serviced by our member agencies because many programs for the psychiatrically disabled do not work with the mentally handicapped.

We are making this submission because family service agencies in Ontario have always been committed to advocacy as one of their intrinsic functions. Without such a commitment, service to our clients and the community would be deficient. It would also conflict with our accreditation standards and with fundamental social work values as expressed in the code of ethics of the Canadian Association of Social Workers.

Generally we applaud the direction of this act. It addresses the genuine need for vulnerable people to have an independent advocate with the power to investigate possible abuse.

The act seems to proceed from the value base that accords vulnerable adults the same rights as other adults in the community. While this is an appropriate cornerstone for such an act, competing principles would challenge that value. Do we give up the notion of the need for protection if these adults state they do not need such? Is a statement to that effect sufficient to dismiss the advocate even if the investigator has suspicions to the contrary?

Do we treat vulnerable adults like we treat battered women? Do we provide choices and leave the decision to act up to the woman involved, or do we view the vulnerable abused adult as an abused child whose stated wishes have less influence on the outcome than the opinion of the investigating professional? This legislation assumes that the determination of the need for protection rests ultimately with the vulnerable adult. We concur. While an active and sensitive offering of options is necessary, often in a non-adversarial manner, the final decision must rest with the vulnerable adult. This stance will provide as much empowerment as possible.

However, a major limitation of this act is that if abuse or neglect is uncovered and the vulnerable adult wishes to change that, there are no resources to provide alternatively for the vulnerable adult if he or she is unable to live alone. Even if the vulnerable adult is capable of living independently, to arrange such on immediate or short notice is often impossible, and there is very little emergency service available. If advocates are to do this kind of investigation, resources must be available for the safety and support of vulnerable adults on both an emergency basis and afterwards. Otherwise we may do a greater injustice to the

target population by setting it up for continued or increased abuse after the advocate departs.

We note with concern the absence in this act of a philosophical context about advocacy. Advocacy is a process, not simply a single act or intervention. On a first level, it is an integral part of a larger case management function which also includes assessment, coordination and counselling. In order to have optimal impact, advocacy services cannot be established in isolation; they must be carefully connected to the other components of case management and to other community support services. Many of these services have identified the need for increased or second-level advocacy to be available when current systems fail to provide for the clients' needs or wishes. These community services would provide referrals and backup for an advocacy service. Alternatively they might be the object of a complaint by, or on behalf of a vulnerable adult.

Clause 1(f) refers to one purpose of this act being "to acknowledge, encourage and enhance individual, family and community support for the security and wellbeing of vulnerable persons." This section underscores the value of various supports for vulnerable persons. Advocacy can only contribute to those supports if it is appropriately positioned as part of a range of service.

Community support services, especially to vulnerable populations, must be arranged on a continuum which acknowledges the connections of the services one to the other. Other programs in the community include first-level advocacy as an intrinsic function. The new proposed Advocacy Commission should encourage the use of first-level advocacy whenever appropriate. Then when necessary it would provide second-level advocacy which is problem-focused, driven by consumer wishes and triggered when existing systems cannot or will not give the client what she or he is seeking.

**Ms Foley:** I am going to speak to the impact on various other programs that currently exist in the community.

Clause 7(1)(e) mandates the Advocacy Commission to "ensure that community development strategies are applied in the provision of advocacy services." Healthy and constructive community development requires close working relationships with existing services.

What will be the impact of this act on other programs where some advocacy is already in place? Those include services such as the adult protective service workers, many of whom are placed at family service agencies, the patient advocate who provides advocacy services to people in psychiatric facilities, and case management programs which work with people in the community who have had a psychiatric illness.

The December 1990 Backgrounder circulated by the Office for Disabled Persons suggests that the patient advocate provided under the Mental Health Act would be transferred to the new Advocacy Commission. We would support such a transfer in that the new system would be asked to intervene for individuals who may have multiple disabilities and who could easily fall into the cracks if there remained two separate systems.

We would urge that the APSW program continue intact where it is part of an integrated service delivery system.

The new Advocacy Commission would be available as an additional resource when APSWs face a situation for which they need further resources, in much the same way they use other community services such as health care or legal clinics. In this way, advocacy as a process remains part of the continuum of service and is not isolated or divorced from other programs.

We are aware there has been a suggestion that the APSW program should be absorbed into the Advocacy Commission. We would strongly oppose such a move as it ignores the other equally important case management functions of assessment, coordination and counselling that APSWs do. It also ignores the fact that a considerable amount of first-level advocacy is successfully achieved by adult protective service workers. Inclusion in the Advocacy Commission would endanger the integrity of the APSW program as the commission would not be equipped to ensure the provision of those other services of counselling, assessment etc.

It must be acknowledged that advocacy is a process of interference in the status quo. Whether it is practised on behalf of individuals or groups of vulnerable people, its very nature means that existing government and social services may be challenged.

It has been our experience as family service agencies that some Ministry of Community and Social Services personnel have not always respected the implications of the advocacy work done by APSWs, especially if it challenged some other MCSS-funded programs.

In the areas where this has occurred, it is a serious problem that must be addressed, but that address would be more appropriately accomplished through either consistency on the part of the MCSS personnel or by moving the sponsorship of an intact APSW program to another ministry rather than by a wholesale absorption into the Advocacy Commission which we believe would result in a disrespect for other APSW functions. Such changes would free APSWs to advocate on behalf of a consumer even if that meant a challenge to the programs funded by the Ministry of Community and Social Services.

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There are several specific clauses we want to speak to.

Subsection 3(2) refers to the possibility of volunteer advocates. We are uncertain about the purpose of that or exactly in what manner volunteer advocates might be constituted. While the intention might have been to utilize appropriate friends and family members, we believe that should be done only with the most careful screening so as not to jeopardize those very relationships. At the very least the expectations, training, supervision and, most of all, accountability of any volunteer advocates should be the same as for paid staff.

Subsection 5(2) speaks to the number of people on the Advocacy Commission. The range is from 7 to 13. We suggest the upper limit be the target, as the number of organizations which represent vulnerable persons is extensive. To ensure province-wide representation and a range of disabilities being represented, that would suggest the number 13 is much more appropriate.



Subsection 15(2) speaks to a majority of the members of the commission having been persons the organization represents. We were uncertain about whether that referred only to disabled persons themselves or if it also included their families that many of these organizations represent. Many of the organizations referred to in section 15 are comprised of people who have a specific interest in the disability, with often the minority being people who have, or have had the condition themselves.

Section 21 refers to the premises where an advocate can enter to do an investigation. We are a little concerned that this leaves it open to an advocate demanding or requesting entrance to a private home. It is interesting that "premises" in that section is not defined, whereas elsewhere "facility" is very carefully defined. We think this leads to a debate about whether the risk of neglect or abuse of a vulnerable person outweighs the right to privacy on private premises. Our society has made a clear determination about this regarding vulnerable children, but we are not sure the same should be applied to vulnerable adults. We suggest one compromise might be that a warrant be required for entrance to private premises.

Section 27 refers to an allowance of four days before access to the records would be available. We are of the opinion that this might present an unduly long delay and could in extreme circumstances result in the alteration of a record.

Section 30 uses the word "may" to describe the course of action in reporting the likelihood of serious bodily harm. Such a possibility calls for a stronger directive. We suggest the use of the word "shall" would be more appropriate. Reporting could be somewhat open in that a warning directly to the person concerned could constitute proper reporting.

Some other items are not addressed in this act and require clarification. Notwithstanding clause 36(d), we are uncertain about who will determine the state of vulnerability. We think that should probably be greatly defined in the act rather than left totally to the determination of the commission in regulations. The act does not speak to the circumstances where the consumer is not able to give direction about his or her wishes to utilize the services of an advocate. Finally, if abuse is reasonably evident, what happens then? Who decides if a charge is to be laid? Fundamental to any system of formal second-level advocacy is that the line of accountability be outside an agency which is a major provider of service. The Advocacy Commission as envisioned in this act would provide that either directly itself or through non-profit community agencies.

In closing, we commend the effort which has been directed towards the increased protection of vulnerable adults. We would suggest that an evaluative function and a duty for the minister to respond to or act upon the annual report of the commission be added considerations prior to the final drafting of this act.

**Mr Poirier:** Interesting points. I am also worried, as you are, about possible duplication of services. I know that at some places you mentioned you would like some of the advocacy services already there to remain, with the Advocacy Commission providing some other services of advocacy on a parallel basis. That can be done, but after 13 years of community development work, including seven as

an MPP, I have given up trying to ask different MCSS managers, "What do you do that they don't do?" You may get four, five, 10 or 15 organizations that service the handicapped or whatever specific nature you would want to see in the community. All I get is this blank stare on their faces: "I'm not too sure what that person does. This is what we do." Are you not afraid that there might be this kind of duplication—I am being the devil's advocate here—unless you assemble all advocacy under one commission?

**Ms Foley:** It certainly calls for an understanding about what level of advocacy you are speaking to. We are clear that, for example, what we would call third-level advocacy, which is the legal system, would not be part of such a commission. We discern a difference between what we would call second-level and third-level advocacy. Because advocacy at the first line is such an integral part of so many community agencies, that part should not be duplicated. I do not see the current Advocacy Commission duplicating that. I think they are providing a second level of advocacy that goes beyond what is currently available and does so in a fairly defined and well-considered manner that is still, hopefully, non-adversarial and will in most cases mean that the situation does not have to proceed to a third-level or legal kind of advocacy.

**Mr Poirier:** There is another point here that says, "At the very least the expectations, training, supervision and accountability of volunteers should be as for paid staff." Nice wish, and I agree with you, but do you think that in the real world that is possible? There would be a lot of expectations about paid, trained, professional—if I may use that word—advocates. Can you expect that, with the same accountability, of volunteers?

**Ms Mayhew:** We probably would not, which is why we are concerned about the appearance in this bill of any consideration of using volunteers. I think it also needs to be said that just because they are not being paid does not mean the job they might want to do is not important.

**Mr Poirier:** Of course; I agree with you.

**Ms Mayhew:** If it is important enough to have them do it, then it is important enough to have them accountable for what they do. Having said that, you are right. Accountability is often less achievable with volunteers. Hence our concern.

**Mr Poirier:** That is right.

**Mr J. Wilson:** Admittedly I do not know a lot about advocacy; I am learning a lot in the process of these hearings. To hear that there is first-level, second-level and third-level advocacy, you would expect that the advocates hired by the new commission and supervised by it would provide the full continuum of advocacy. I am a little confused. They would do first-level; I have got that clear. Then you talk about integrating with other community services.

**Ms Foley:** Let me be more clear about that. First-level advocacy is the intervention when you are doing several other things with people. You may be helping them to take a look at what their options are in the community, to pursue those options, to jockey other services to provide what a

certain person may need. That is part of what currently goes on in the community, and often successfully but not always so.

There are times when people are truly in jeopardy, are being disadvantaged by people who are in a position to abuse them personally, physically or sexually, sometimes in terms of their money. That is the second-level advocacy, where some greater force of law and investigation is required to protect someone's rights. That is what we see the Advocacy Commission doing. The first level—jockeying, assisting, assessing, coordinating, some counselling—is already accomplished, but at times it cannot meet that second level of vulnerability, which requires a greater legal mandate.

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**Ms Mayhew:** The first level could be likened, in a way, to brokerage. Existing programs, including those offered by adult protective service workers, are very successful in providing the brokerage service to make sure that people who are disadvantaged get put in touch with the various networks they need. It is where that does not work or where there is more specialized advocacy needed that we see the proposed Advocacy Commission fitting in.

**Mr J. Wilson:** I appreciate that, because one of the concerns we have is that we may be setting up a system that is perhaps a bit more adversarial than what we have now. You mentioned on one of the pages of your brief APSWs running into conflict from time to time with other service organizations and then you talked about the new advocates doing second-level advocacy, particularly in families and emergency room situations and that sort of thing, outside the psychiatric area. Can you give us an example where an APSW now would run into problems that may need to be sorted out? Have you a real-life example of what you refer to at the bottom of page 6?

**Ms Foley:** Certainly we run into situations where we have some reason to believe that a developmentally handicapped adult may be physically abused or financially abused by people who are looking after the adult. It is very difficult to investigate that, because that adult who is in charge, so to speak, will not allow us access to the developmentally handicapped adult. If they say, "You can't come in here and you can't talk to them," we have no way of forcing that.

Those are some typical examples. We realize that even if you can sometimes get in, if such an Advocacy Commission would provide the legal mandate to allow entry, that does not necessarily mean that a solution for the problem is found, but at least there is one additional level of investigation and at least there is the choice then of offering the vulnerable adults some options, which sometimes we are not able to do because we are not able to get to them. Is that helpful?

**Mr Sterling:** I want to get from the ministries that are here, for my own knowledge, all the existing agencies providing advocacy services, their budgets, their mandates and whether the government envisages these agencies or parts of ministries closing down as a result of this act taking over their functions. I think one of the options the committee should look at, as I think one of our witnesses

put forward yesterday, is whether you extend the functions of those advocacy groups that are already there. I would like to receive that information because I am concerned, not only with the concepts involved here but also with the financial picture of duplication and dispersing of efforts. As I read this bill and I go through it, it seems that we are going to provide advocates for people who do not want advocates in this province and for people who do not need advocates. We are casting a wide net, and as a result of it I think because of financial constraints we are going to leave out some of the people who really do need these services.

**Mr Malkowski:** When we are talking about what we do with the current services, the act will not interfere with those programs. I just want to clarify that for you, Mr Sterling.

**Mr Sterling:** As we have had first-, second- and third-level advocacy described, I would like to know all those agencies which are providing second- or third-level advocacy services to the public and are funded by the taxpayer. I do not understand why you should not be able to provide that. I would like to know the numbers.

**Mr J. Wilson:** It goes back to Mr Poirier's question. In our own communities we have numbers of groups that reportedly do the same things and now we are starting another full series, so it would be incumbent upon the government to see whether we are duplicating.

**The Chair:** Thank you, Mr Sterling. Briefly now, on this side we have Mr Winninger and Ms Carter.

**Mr Sterling:** I am sorry. Am I going to get an answer to my question?

**Mr Winninger:** As long as it does not cut into our time.

**Mr Malkowski:** The Advocacy Commission, in terms of making the regulations, will deal with that issue.

**Mr Sterling:** I want to know what you are doing now. I want to know what advocacy services are being provided by the government now to the public of Ontario, whether you are in a psychiatric institution, an old age home or wherever. I want to know what is being spent there and whether the Advocacy Commission is going to be doing the same job. Do not worry about the Advocacy Commission, just tell me what you have there now. I would like to know what those services are, what they are costing and how many people are working at them.

**The Chair:** Possibly what we can do is get a written answer for you later.

**Mr Sterling:** That is what I would like. I would like a commitment to that.

**The Chair:** If it is possible, Mr Malkowski, a written answer later?

**Mr Malkowski:** I will refer it to Trudy Spinks for comment.

**Ms Spinks:** I think your request for a written answer may be well taken. I can tell you, for example, that the people you heard from yesterday, like the Advocacy Centre for the Elderly, are examples of what I think the presenters would describe as third-level advocacy. The Advocacy Resource Centre for the Handicapped is also a



very prominent third-level advocacy organization. I do not have specific dollars around funding. They are provided through the legal aid program.

**Mr Sterling:** You can get that for me?

**Ms Spinks:** I will attempt to get that for you, yes.

**Mr Winninger:** I appreciated your presentation. You raised a concern about section 27 and the four-day time period for responding to requests by advocates for access to information. I understand there may be emergency situations where a shorter time period would be in order, but do you not think that four business days is a reasonable time to review what may be quite voluminous records and determine which of those records can be released or which cannot be released because they happen to be protected by the Freedom of Information and Protection of Privacy Act, or may pertain to a third party who has not consented to release of them or may even be protected by solicitor-client privilege. Four days does not seem to me to be an unduly extensive period of time to conduct that kind of review. Perhaps you can comment.

**Ms Foley:** It is hard to know ahead of time whether we are in jeopardy of any record alterations. That is a very serious accusation to raise or bring. It seemed to us to be fairly long, I suppose in that most of us at family service agencies can make records available very quickly and yet still are under those obligations of ensuring that whatever records related to Mrs Smith, if they also include references to someone else, have those removed before Mrs Smith sees her record. It just seemed unduly long. It may be that we need to play it out and see if that is a workable number or if in fact that does lead to some jeopardy.

**Ms Carter:** I think you make an excellent point on page 3, that sometimes the resources are not available for people who may need alternative accommodation and so on and that we risk making their situation worse if they have to stay with the people who are causing their problems. I do not think we can do everything in this act, but I am just wondering whether some of the other things we are doing might not be relevant here. I am sure you are familiar with the long-term care proposals that are now out for discussion. Also, a lot of affordable housing developments are being encouraged and a lot of them are coming to fruition. I was wondering whether you think that some of those problems may be answered in that kind of way, because under the long-term care act that will be coming forward we are trying to increase service in the community as opposed to institutional care. Maybe when some of that is in place it will solve some of these problems.

1020

**Ms Foley:** When some of those pieces are in place, I think they do provide some long-term assistance—housing, long-term care. Some of our concerns are that this is not currently available, that some of the needs of some of these people are very specialized and, last, that the emergency care is not available, an alternative place to house someone, even if they do not need a great deal of care tomorrow, because they have finally said, "Yes, this is an intolerable situation for us." Sometimes it is more the

emergency concerns, assuming that some of those other pieces get put into place.

**Ms Carter:** Maybe on the lines of the YWCA's Crossroads but for a different clientele; that kind of service.

**Ms Foley:** Yes.

**The Chair:** Ms Mayhew, Ms Foley, thank you very much for taking time out of your schedule to come in to give your presentation this morning.

#### ONTARIO PUBLIC HEALTH ASSOCIATION

**The Chair:** Our next presenters will be from the Ontario Public Health Association. Could you please come forward and introduce yourself for the record and then proceed.

**Ms Shortt:** My name is Linda Shortt. I am chair of the family and personal health division of the Ontario Public Health Association and in my professional life I am director of adolescent health at the Borough of East York Health Unit.

**Ms Danaher:** My name is Audrey Danaher. I am chair of the public policy and resolutions committee for the Ontario Public Health Association.

The Ontario Public Health Association is a 3,000-member organization of individuals and constituent associations from various sectors and disciplines who have an interest in improving community and public health in Ontario. Its goal is to provide leadership and a unifying voice in public health and to promote the health of Ontarians.

We will be addressing Bill 109, An Act respecting Consent to Treatment. Section 8 of this bill specifies age 16 as the age at which a person is presumed to be capable of consenting to treatment. Section 9 makes provision for a health care professional to give care to a person under 16, but the onus is put on the health care professional to comply with certain criteria, standards and procedures. Even if this is made easy, it is still intimidating and it is likely that most health care professionals will simply refuse to provide confidential care to those under 16. It is even more likely that those under 16 will not seek care.

There is an additional complication, fear by health care professionals that their care to a young teenager would be challenged by a parent. This is far more likely with a specific age set out in statute. In Britain, with a statute specifying age 16, the National Health Service reminded health care professionals that it was still possible in some circumstances to provide care to a person under 16. This was challenged by a parent and the case went all the way to the House of Lords.

The social consequences are serious. First, with respect to teen pregnancy, Ontario has made major gains in reducing teen pregnancy. These gains could be lost and Ontario, with the type of legislation common in the United States, could experience US rates of teen pregnancy. It is noteworthy that the teen pregnancy rate in Canada has been fairly static except in Ontario and Alberta, both provinces until now not having an age of consent. The highest rate of teen pregnancy in Canada is in Saskatchewan, which specifies age 18 for consent to medical treatment.

The Ontario teen pregnancy rate, which has improved the most among Canadian provinces, is due to increasing sexuality education in the schools, family planning clinics



in health units and health care professionals providing care to teenagers in accordance with common law. Common law respects the right of persons to consent to care, provided they are capable of understanding the nature, purpose and consequences of such care.

Second, with respect to sexually transmitted diseases, all sexually transmitted diseases affect teenagers. Of recent importance is the epidemic of chlamydia. In Ontario in 1990, over 400 cases of chlamydia were reported in females under 16 years of age and the rate is increasing. Chlamydia often causes no symptoms but most cases have mild symptoms and it is common not to seek treatment. The untreated infection goes on to cause severe complications, including involuntary infertility. The increase in young Ontario teenagers being infected is shown in the attachments you have there.

It is vital that there be prompt access to confidential treatment at all ages if we are to control this infection. This also applies to all other STDs including AIDS and hepatitis. Teens afraid to seek treatment would also not receive the intensive counselling these STDs require.

Studies of parental attitudes to confidential care of teenagers have been uncommon, but a recent 1990 study in East York showed that parents as well as teenagers placed a high value on confidentiality. A law that presumes capacity at age 16 may not even be supported by parents, most of whom would prefer that their youngsters seek care from a health care professional rather than have them become pregnant.

In terms of options, there is considerable support for age 12 as the age for giving consent, but the problem with age 12 is that some at this age may not be capable. Common law requires the health care professional to make a judgement in each case. The retention of common law is therefore preferable to a statute specifying age 12.

Our recommendations are as follows:

1. To amend Bill 109 by deleting reference to age, on the basis that society is best served by common law.
2. We urge the government to support education of health care professionals and public education respecting the application of common law to minors seeking confidential care.

**Mr Poirier:** I am quite happy you are talking about this age thing. There is your claim that in Ontario in 1990 over 400 cases of chlamydia were reported in females under 16 years of age. From my informal talks with some local doctors, this seems to be an extremely low figure, but then of course with statistics it is only the tip of the iceberg, I presume.

I think it is extremely important that people under 16 be able to get medical attention and not have to worry about the implications of the law, and that the health care providers not have to worry about the implications of the law or the silence of the law to protect them in all good-faith dealings with their clients.

An interesting point I would like you to explain further is: "A law that presume capacity at age 16 may not even be supported by parents, most of whom would prefer that their youngsters seek care from a health care professional rather than have them become pregnant." Maybe English is my second language, but what does that say?

**Ms Shortt:** What it means is that we surveyed parents of over 1,000 adolescents in East York and asked them what was the most important feature of sexual health care their adolescents might seek. What they said was the confidentiality and privacy of that kind of service; that was the most important feature. What we had parents say was that it was important that teens have access to confidential and private health care services.

**Mr Poirier:** Whether the parents were aware of it or not?

**Ms Shortt:** That is right.

**Mr Poirier:** They were comfortable with that?

**Ms Shortt:** They were comfortable with that; not all of them, but the majority of them.

**Mr Poirier:** Interesting. Therefore, there seems to be a green light for the health care providers and for the government legislators not to have to worry about a majority of parents who say, "You shouldn't allow my under-16 child to have access to a health care provider."

**Ms Shortt:** I think it is dangerous to assume parents in East York are the same as parents all over Ontario. As a professional who works with teens and as a parent, my first preference is that I know exactly what my kids are doing, but I know they are not going to ask permission from me to have sexual intercourse under the age of 16, so my second preference is that they be protected and get the kind of health care that would serve them best. I believe most parents would feel that way.

**Mr Poirier:** If we can extrapolate a bit, as wild as extrapolations can be, there again, "Common law respects the right of persons to consent to care, provided they are capable of understanding the nature, purpose and consequences of such care." Therefore, you believe that common law can take care of protecting the young person under 16, no matter what the age, and that common law will also protect the health care provider should society or someone in society decide to challenge that.

**Ms Shortt:** Yes.

**Ms Danaher:** Yes.

**Ms Shortt:** Our fear is that if you enshrine age 16 as the age of consent, we are going to have health care professionals who literally will not stick their necks out and provide care because the system of rebuttal is going to be too cumbersome for them. Teens will then just not seek care.

1030

**Mr Poirier:** I could not agree more with you. Maybe the parliamentary assistant could react to that and tell us how he feels and come out and tell us right now whether he will come out with an amendment. How does he react to these claims?

**Mr Wessinger:** I do not know whether I will actually respond, but I will respond to the extent that the question of age is an open question with respect to this legislation. It is one of the areas where the minister has indicated we are open to advice with respect to the matter, as we are in all matters. I think that is one she has flagged as of concern.



But I do have a question. If we move back to the common-law situation and not specify an age, what do you do with respect to a child who is, say, under 16 and the health professional determines the child is incapable? Normally, if there is no age specified, that would trigger a rights protection; in other words, the right to consult with an advocate. Should there be a minimum age at which the child should have the right to consult with an advocate on rights protection? Should it be age 10? Should it be age 12? Should it be age 14? Do you have any recommendations in that area?

**Ms Shortt:** If you leave it open, with no specified age, then the health care professional must make that judgement. If you put in an age, then they are not going to make the judgement below that age. At the moment, when we find young people who come to seek treatment who are under the age of 16 who seem incapable, we refuse treatment, attempt to contact parents and go that route. My presumption is that all ethical health care professionals would continue to practise in that way.

**Mr Wessenger:** I think my question, though, relates to when a child should have rights protections. At what age should they have rights protections?

**Ms Danaher:** It is difficult to specify one age, because each child is capable of consenting at different times. In one case a 14-year-old may be quite capable and other times someone who is 12 might be able to make those decisions.

**Mr Wessenger:** I understand you can have that. You could even possibly have some type of treatment, shall we say, and even an 11-year-old might have the capacity to determine medical treatment.

**Ms Danaher:** Of course.

**Mr Wessenger:** Right now under the act there is an obligation to tell the incapable person that he or she is determined incapable and then he has the election to have a rights adviser come in. It would obviously not make sense to allow a four-year-old—at least I think it would not make sense. The medical profession tells us that it does not make sense to have a rights adviser come in and tell a four-year-old that he or she has the right to dispute that there is a finding of incapacity.

What about a 12-year-old, for instance? Do you think a 12-year-old should have the legal right to have protections, to have the right to see an advocate and the right to dispute the fact that the health—it could happen, you know. A health professional, because of his or her own views, could say, "I don't think a 12-year-old is capable of making this decision," and the child might say, "I want to make my own decision." Should that child have the right to dispute that and at what age should he have the right to dispute that finding of incapacity?

**Ms Shortt:** I think we are reluctant to answer your question. I do not have an answer for your question. I do not know at what age a child would have that right.

**Mr Wessenger:** But you do feel that certain children under the age of 16 should have the right to dispute the finding of incapacity?

**Ms Danaher:** Yes, absolutely.

**Mr Chiarelli:** I know you did not specifically address this in your brief, but I am interested. You obviously have a broad background in public health issues. Do you have any sense as to how the act might work in practice in emergency situations, particularly in the mental health area, where someone is brought into emergency and is not in control of his own faculties in order to give proper consent? They have gone off medication. They are at risk of doing harm to themselves. Under those circumstances, do you have any comments on how the legislation might work?

**Ms Shortt:** Our expertise really is not in that and we are probably not the best people to answer that question. We are looking at the impact of enshrining age 16 in legislation and the impact that will have in the community, where you have health care proficient practitioners and family physicians trying to make judgements about service to children.

**Ms Danaher:** On a daily basis.

**Ms Shortt:** On a daily basis, rather than in the acute care setting.

**Mr Sterling:** I am interested in the fact that the common law is working well at this time, and basically part of section 6, I guess—I cannot read it very well—seems to take care of the situation at this time. I see what Mr Wessenger is after, though, and that is, at what point do you not go through the process? If you have a baby that is being circumcised after birth, do you call in the advocate? They are caught in a conundrum here in terms of the other part of the system matching up. What happens at the present time when a decision is made? I guess it is just consultation between the physician and the parents who make the decision.

**Ms Shortt:** You mean for a very young child?

**Mr Sterling:** Yes, for somebody who is not competent.

**Ms Shortt:** Yes.

**Mr Sterling:** That is what happens at the present time. It is very difficult to know what the age is, whether it is four, six, eight, 10 or whatever.

**The Chair:** Mr Wessenger, did you have a further question?

**Mr Wessenger:** No, I have no further questions.

**The Chair:** On behalf of the committee, I would like to thank you, Ms Danaher and Ms Shortt, for giving your presentation this morning.

#### YORK COMMUNITY SERVICES

**The Chair:** Our next presenter will be from York Community Services.

**The Vice-Chair:** I want to thank you for appearing before us. Before you start, I hope each of you will give us your name, just for the record, and then you may begin.

**Ms Wangenheim:** My name is Betty Wangenheim and I am on the board of York Community Services. I am here to introduce the others and give a little bit of talk about YCS. We will save time if we say YCS, if you do not mind. Barbara Titherington, who is our mental health nurse and the supervisor of our adult protective service workers, will be our chief spokesperson. Dennis Robideau, who

is a community legal worker, is here to back her up. In the background we have three adult protective service workers who are very much interested in this and a student from Humber College, so we are getting a lot of interest in this.

York Community Services is a multiservice centre in the city of York, which is an area which has an overrepresentation of the poor, of seniors, of single-parent families. It is definitely a multi-ethnic community with high unemployment. In one way we could say that all our clients are vulnerable, but in addition to that we have what we call target groups that are particularly vulnerable, such as the developmentally handicapped, so we have adult protective service workers, we have psychiatric aftercare work and we have people working with the vulnerable elderly, both in English and other languages.

Our workers care for individuals. They do what we call case management. They also of necessity do advocacy, some advocating for the problems of a particular individual, but because so many of our clients fall between the cracks and there is no group that is particularly looking after them, our workers find themselves having to advocate on a general level for the needs of specific groups.

We have a standing committee on the vulnerable adult which has been working on the problems you are putting before us, these particular bills and the interrelationship. We have found it a difficult thing in that if we only had to discuss one bill we could grasp it easily, but we have concerns about each bill, and we also have concerns about how each bill impacts on the other bills.

In the next 15 minutes we are not going to be able to express to you all our concerns. Barbara Titherington is going to discuss those things which are closest to us, most of which come in the matter of Bill 74 on advocacy. We also have recommendations that entail the relationships between all three or four, including Bill 110. We may not get to those, but we have a brief coming which will go into more detail. The recommendations will be put out so that you can ask us questions about all those if you want.

1040

**Ms Titherington:** Because we are a multiservice agency we took a shot at everything, but that will lead to problems with timing. I will cover some of the highlights and then we will see what comes up in the questioning.

York Community Services applauds the efforts made by the government and advocacy groups to develop this legislation, which is intended to protect the rights, choices and safety of vulnerable adults who may or may not require the assistance of a substitute decision-maker. The matter of imposed protection is a thorny one because it sometimes involves competing rights: the right to liberty, autonomy and self-determination versus the right to protection from the abuse of others and from one's own incompetent decision-making.

Our clinical and community experience supports the belief that there is a need for clear legislated protections, procedures and assistance when a person is incapable of making his or her own choices. One of the strengths of the bill is that it makes it possible to know and follow an

incapacitated person's wishes which were expressed when they were capable.

However, we think considerable caution is needed in dealing with these matters, because we believe that personal freedom and choice are of the highest order of rights, and that guardianship removes the fundamental right of self-determination. Thus York Community Services encourages the government to view these pieces of legislation as being relevant for incapable people only after all other resources have been exhausted. Such resources could include existing effective community and social services, such as adult protective service workers, case managers, counsellors for the elderly and handicapped, and counsellors for people with mental illness as well as family counsellors. The efforts of these people serve to enhance the decision-making capacity and functioning of those who are at risk for becoming incapable. Strengthening the current supports and services could reduce the need for more formal advocacy and guardianship.

Also, we would like to see that all legal proceedings related to the measures allowed in these acts are strictly in accordance with the highest standards of justice, including the provision of adequate safeguards against unnecessary interferences by advocates and guardians. We have some questions about the level of proof required in the determination of incapability. While the magnitude of the effect of the removal of decision-making rights leads us towards the application of the higher standard of "beyond the shadow of a doubt," clinical practice indicates such a high standard is probably unattainable and that "balance of probabilities" is more reasonable.

The bureaucracy surrounding the structures and proceedings of these proposed pieces of legislation is likely to be an additional interference with a vulnerable individual's rights. From experience we know that the office of the public trustee is now overburdened with trustee responsibilities. It is not uncommon at this time to run into problems with trust officers in sensitizing them to the wishes and usual spending patterns of the individuals whose financial affairs have come under their jurisdiction. In addition, response time to requests for money, efforts at case coordination, and management of emergency needs can be unpredictable.

Finally, educational efforts to inform the public and professions of the intent, provisions and use of these bills must be rigorously undertaken. This would require both an immediate and an ongoing educational campaign using multilingual and literacy-sensitive approaches, with specific attention to people who are or may be vulnerable and their families, as well as to professionals and the public.

Now that I have given a summary review of some of our overall impressions of these bills, I will touch on a highlight of the individual pieces of legislation, starting with Bill 74.

The advocates under the jurisdiction of Bill 74 explain the legal rights and options to vulnerable people, take instructions from their clients, give voice to the competent wishes, if they are known, of their clients, and work towards ensuring the best possible outcomes.

In our opening remarks, reference has been made to the concerns we have regarding the separation of advocacy services from effective counselling and case-management



services. While we appreciate that there is sometimes a need for strictly legal and/or impartial rights advice and action, it should be strongly recognized that as many advocacy functions as possible remain within the mandate of effective, ongoing counselling programs, and that when formal advocacy comes into play, where possible there should be good communication and coordination between formal and informal advocates.

Certainly formal advocacy services which are not associated with other service providers can be critical to the protection of the rights and freedoms of vulnerable people and critical to their position of having equality before and under the law. The provisions of the act will help to guard against abuse and neglect of these people and will assist them in accessing needed legal, social and health care.

Our concerns are that the advocate must establish what the wishes and needs of the individual being represented are, and this requires good communication. There must be recognition therefore of the need to surmount barriers to clear communication, such as low literacy level, mental dysfunction, deafness, linguistic differences, severe speech impairment and cultural factors. Included in this matter of communication is also the problem of non-instructed advocacy. As it currently stands, the act does not make adequate provisions for advocacy without instruction. This will leave those who are not able to instruct an advocate, often the most vulnerable people, in a position of having no formal advocacy services.

We think the focus of the act is another problem, in that it concentrates mainly on the structures of the commission and the appointments advisory committee and the proceedings related to gaining access to premises and records. There is very little about a model of advocacy. This would be critical to the fair and effective implementation of the act.

Along these same lines, there is insufficient reference to the principle that advocacy should help people to maximize their autonomous informal decision-making and achieve their highest possible level of functioning. Also there is no attention given to the specific needs of people who are vulnerable. Furthermore, some people have expressed concern about the lack of a provision for change if a vulnerable person does not like his advocate.

We also have questions about the three pieces of legislation being enacted together. We recommend that Bill 74 be enacted first to give time to establish an effective advocacy program and that Bills 108, 109 and 110 be held for several years.

Lastly, for Bill 74, we believe that an advocate should be allowed to and perhaps required to report the possibility of likely harm to self as well as likely bodily harm to other people.

I know I am running out of time but I will just touch on Bills 108 and 109.

In Bill 108, we agreed with much of it, but we have some points of concern. One of these is that there are no procedures recorded in subsection 16(7) for actions to be taken if a person refuses statutory guardianship. Also, in the process for assessment, although it seems to be well-described and thorough, there is no mention of who the

assessors may be and what level of training and accountability is required.

In section 47, in the event that the public guardian and trustee's office must assume guardianship responsibilities, personal care decisions on an ongoing basis will be difficult due to the lack of a personal relationship with the individual and the likely bureaucracy of this office.

In section 49, guardianship plans are very good and will encourage a thorough, thoughtful and accountable decision-making process. But if you leave it to the public guardian and trustee to simply follow policies and guidelines instead of requiring them also to make a plan, it will be inadequate.

In section 50, physicians should not automatically be accorded the status of being an assessor. They should require the same kind of training as all other assessors.

We have some concerns in section 57 about partial guardianship. It may present some unanticipated problems, as it could be viewed as being less serious than full guardianship. Such a perspective could then lead to relaxing the criteria for determining that a person is incapable. Also in day-to-day practice, partial guardianship may be quite complicated and we recommend that this part be reviewed and looked at again.

#### 1050

In section 64, decisions regarding health care can be included in the scope of the guardian's duties. However, we wonder what will happen if the person who is the incapable person disagrees with the guardian's decisions. This particularly comes up in areas of medication, surgery, medical tests, as well as in softer areas: places to live, daily activity, hygiene standards and so on. The act does not identify the measures which should be taken in the event of such disagreements.

In Bill 109, we have concerns about the age of consent to treatment. The assumption of incapability for those under 16 will present an unnecessary barrier to confidential health care for teens who are seeking family planning assistance, abortions and treatment for sexually transmitted diseases.

Also, as with the 16 years in Bill 74, we believe people under 16 should have access to an advocate if they are in certain care facilities and require those services. We also think there will be a problem for health-care providers to determine if there is a valid guardianship or attorney arrangement, unless there is some way of filing these documents and giving access to them by the health-care provider.

Again, sections 14 to 21 do not provide any guidelines in the event that the incapable person refuses to cooperate with treatment, both in institutional settings and in the community.

Lastly, in Bill 110 we have some concerns about the proposed new office of the public guardian and trustee having the requirement that the public guardian and trustee must be a member of the bar of Ontario with 10 years' standing. This may serve to perpetuate the present legal tone of the office of the public trustee instead of emphasizing the multidisciplinary approach to trustee and guardianship matters.

Although we have our recommendations set out separately, I will not review them because I have referred to them in many of my comments.

**Mr Poirier:** In 25 words or less, could you elaborate a little bit on why you want the delayed action between the different bills.

**Ms Titherington:** We believe it will be a challenge to set up an effective and sufficient advocacy program and establish it in the relationship to the advocacy program, to the commission, to other agencies, government and so on. Before the advocates have to jump into doing a lot of work with Bills 108 and 109, we think at least a year or so should be allowed to get it up and running.

**Mr Poirier:** No doubt. But if I may be again the devil's advocate, consent to treatment and the other bills also—

**Ms Titherington:** Yes, they all fit together. I understand your point and it is well taken.

**Mr Poirier:** Like I said, we were given this document yesterday, which is a resumé. I have never seen as many arrows pointing to another bill. It is like trying to drive downtown with the one-ways in Toronto.

**Ms Titherington:** I think you have an excellent point. What will the advocates do if there is no Bill 108 and Bill 109? What will be their mandate at that point?

**Mr Poirier:** Would you be more handicapped without them or with them, all trying to have things come forward? Have you discussed this intensely? I am sure you have not.

**Ms Titherington:** We have discussed it and it is one of the considerations we have, because it does take a long time to get a system place. Maybe a shorter lag time would be more appropriate.

**Mr Poirier:** Does it ever get fully in place, sometimes?

**Ms Titherington:** Of course this is not Utopia.

**Mr J. Wilson:** You mentioned briefly some concerns about added bureaucracy. Are you very much worried that a new system of advocates will bring in a real bureaucratic burden? Do you want a chance to expand on that?

**Ms Titherington:** Our experience with the bureaucracy of the office of the public trustee is that it is very centralized and runs according to certain regulations. It is not really set up to be sensitive to the individual needs and changing needs of people.

**Mr J. Wilson:** Because it does a sort of mechanical processing?

**Ms Titherington:** Yes. It is not to fault them. It is just the way they have been established to date. They have been dealing mainly with financial matters. In this kind of work, and we do day-to-day clinical work and often include advocacy in that work, you really need to be in touch with the family, the friends, the person, their community, their situation and usual preferences, and these things change and you have to be able to react and respond to those changes. It is difficult to know how to establish it.

**Ms Wangenheim:** We have great sympathy for your having to figure out how all these acts come together on short notice, because we have been working on them since last fall and we are still not sure.

**Mr Poirier:** No worse than the government; do not worry about it.

**Ms Wangenheim:** Yes, I know. One indication, for example, is that one of our people working with seniors has had great difficulty with the public trustee, trying to explain that whereas they might think you should only spend this much on something, when somebody's style of life has been different and our workers are aware of what the style of life has been, what the person wants is perfectly adequate. We have also figured out that in some of these things, particularly with the substitute treatment decision-making, if it goes through all the things that are laid out, they are afraid some of the patients are going to be dead before all this has been explained to them.

**Ms Titherington:** Unless the office changes and can react very quickly. This applies to decisions regarding psychiatric treatment when a person is admitted in a psychotic condition and to a psychiatric facility. You can use chemical restraints at this time if restraint is required. The new bill, I believe, does not allow chemical restraints, only physical restraints. This will make it very difficult to manage people who are in an acutely psychotic and disturbed condition, so there has to be a real turnaround in the decision-making; it has to be a little faster than it is now.

**Mr Malkowski:** Just one or two comments on two specific areas and some of the recommendations you mentioned. Your concerns regarding the Advocacy Act being established—right now there are certain gaps out there that are not being served by many of the community agencies—I think you talked about some of the advocacy that you do on that level. You see individuals or groups that kind of fall between the cracks, and do personal advocacy. Perhaps you could give me an example of that so that I can get a clear handle on that.

The second point is in relation to concerns about the labelling of individuals as incompetent and specifically, in relation to communication barriers that may have to be overcome, be it individuals who are deaf or multilingual considerations and so on. Often, I agree, many medical professionals will label individuals incompetent simply because they cannot communicate with them. Do you have recommendations on what should be considered when we look at modes of communication and how the assessments can be done with sensitivity to various communication modes?

**Ms Titherington:** The first question is with regard to a case example, I think, of where our day-to-day advocacy comes into place. I can think of one of the people I am working with now, an elderly woman who has a long-standing mental illness. I have known her for nine years. Her affairs now are under the public trustee. First of all, I had to do a lot of advocacy to have that arrangement put in place. Some of the psychiatrists were reluctant to make that decision as the person appeared sort of competent in the hospital, but she completely mismanaged her money to the point of losing thousands of dollars in the community.

That advocacy was necessary and important and I believe it has helped us to work with her further, particularly around repairing her house so that she could live in it. Then the advocacy needs were around where she would live, whether she should get a new furnace in her house, because for three years she had been heating the house



with a gas stove, with the burners going. Advocacy around that kind of day-to-day living arrangement is often required, and no one else will pick that up except a front-line worker.

Then there is advocacy with regard to where the person would live and following the same person, whether she would continue to live in her house, whether there are some concerns of danger or whether she would live in a boardinghouse and if so, which kind of boardinghouse and what kinds of services were needed in that particular boardinghouse.

Then with the same client there will be an issue of consent-to-treatment because she is refusing some very important medical treatment for diabetes and another medical condition. If this new bill were in place, what would happen? If she continues to refuse the medication for these medical conditions when she is in the community, how do we deal with that? Right now we are trying to advocate for good medical care for her, but beyond that we cannot do much.

With regard to your second question, how do we sensitize assessors to the special communication needs of individuals when they are determining competency or incompetency, I do not think I can come up with some guidelines, but I think we have to write into the bills the importance of being sensitive and having the resources available for doing these assessments. This is particularly applicable to areas which do not have a lot of resources: non-urban areas, northern areas, small towns and cities, where it may be very difficult to find people who speak the same language or who know the Bliss symbol communication system and so on. I think it will be a problem that has to be given serious consideration.

**Mr Wessenger:** I would like staff to answer the comment with respect to chemical restraints, because I am unclear whether in fact there is any change in the law with respect to the use of them.

**Ms Titherington:** I did not address it in the brief. I am unclear too.

**Mr Wessenger:** I am going to ask ministry staff if they could respond to that.

**Ms Auksi:** In the Consent to Treatment Act the reference to restraint is essentially to retain what is in the common law allowing for restraint, but it does not specify what the nature of the restraint would be. There would be no reason to automatically preclude chemical restraint.

**Ms Titherington:** The Mental Health Act does allow for chemical restraint.

**Ms Auksi:** The thing is that the Mental Health Act is simply more specific about the issue of restraint, but it does not mean that a particular manner of restraint is precluded under the Consent to Treatment Act.

**Mr Winninger:** I would like to return briefly to a question by Mr Poirier. I certainly appreciate the implicit warning to avoid going the wrong way on Toronto's one-way streets. If you were to delay the implementation of Bills 108 and 109 and just implemented Bill 74 now, as some consumer interest groups have recommended, do you not run the risk that the advocates will become informal guardians without the kinds of procedural safeguards

that a power of attorney or court-appointed guardianship would confer?

**Ms Titherington:** That is right. They may start working more into the social advocacy realm in which many of us front-line workers are already involved. Really this act is set up to establish advocates who do rights advocacy and advocacy informing people and gaining access to legal services. It may get things off to the wrong start if they do not have the other bills to work with. Also, it may be a little complicated to know how these new advocates will fit with the psychiatric patient advocate office if all bills are not put together. I see your point and I think it deserves further consideration.

**Mr Robideau:** However, there is no reason why the bill could not be introduced on a staggered, step-by-step approach. It does not have to be all or nothing. There are certain elements of the act that are really important and should clearly be set up in advance of Bills 108 and 109. That is simply what we are saying. I recognize that if you just plop it in all at once you could run into some difficulties, but we would like you to recognize that perhaps a step-by-step, staggered approach is quite acceptable.

**Mr Poirier:** We will need a break as a caucus because we are called. We have just been called for a special gathering that should last about 5 or 10 minutes. With the heating system breaking down yesterday and the clocks breaking down, whatever, we should be back here by 11:30. If I can ask for unanimous consent for a break for this half hour I would be most grateful. Our apologies to the groups.

**The Chair:** On behalf of the committee I would like to thank you for coming to give your presentation this morning. We will recess until 1130.

The committee recessed at 1103.

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#### LEARNING DISABILITIES ASSOCIATION OF ONTARIO

**The Chair:** This is just a reminder that we will be going until 12:30, because we have a substitute for Downtown Youth Services Agencies, Anne Fast, coming in at 12. Now I will call forward the Learning Disabilities Association of Ontario. Could you please introduce yourself for the record and then proceed.

**Ms Nichols:** My name is Eva Nichols and I am the executive director of the Learning Disabilities Association of Ontario. My organization is an advocacy organization that has been in existence in Ontario for almost 29 years. We advocate in all directions, as I shall touch on in a minute, for the 800,000 residents of Ontario who have learning disabilities. We were initially formed as a parent support organization and have gradually grown, as the children with whom we began have grown into adulthood. Today a large part of our work relates to the adult who has learning disabilities and has had minimal or no service in Ontario.

In the brief that we have written, we have outlined in some detail who are people with learning disabilities and have offered you some definitions. I am not going to spend time reading that to you now, but just so that you understand what kind of population I am speaking about, we are

talking about individuals who are of average or above average intelligence, but who because of a neurological dysfunction perform way below what is expected in a number of different academic, social and behavioural ways and as a result face great difficulties functioning in society.

Some of these statistics that relate to the status of people with learning disabilities will explain why we consider people with learning disabilities vulnerable in today's society. There is general understanding and acceptance that learning disabilities affect approximately 10% of the population and most people, whether they are educators or not, readily accept that the most important first intervention has to occur in the school setting, because if youngsters with learning disabilities are helped to learn to cope with and compensate for their disability, their future success is much greater.

In spite of that, we have 73,000 students in Ontario currently identified as having a learning disability, which represents 3.8% of the school age population. That is a large number of children, but the other side of that is that 6.2% of the school-age population who, according to everybody, have learning disabilities do not even have the identification. The fact is that in the province today, if you do not have the identification, you do not get the services.

It is estimated through a series of studies, both American and Canadian, that between 50% and 80% of both young and adult offenders have learning problems, mostly learning disabilities which have not been identified and which have not been treated. Studies show that learning disabilities are implicated in about 50% of adolescent suicides. Some 74% of individuals with learning disabilities who do not receive adequate help will exhibit some significant mental health problems, such as chronic clinical depression, during their lives. Finally, it is reported right here in Ontario that adults with learning disabilities typically hold a job for three months and they are fired.

If one looks at that combination of statistics, without a question these people are vulnerable. Their vulnerability is compounded by the fact that there is very limited recognition of their needs, and numerous government services and programs which are in place to serve people who are vulnerable, who have disabilities, deny access to people with learning disabilities.

To give you some examples, the assistive devices program of the Ministry of Health by policy excludes people with learning disabilities. Respite care and special services in the home again by policy exclude people with learning disabilities. Finally, if people with learning disabilities go through some kind of vocational training program but are not able to be employed and self-sufficient thereafter, they cannot pick up any of the disability-related benefits or pensions, just because their primary disability is a learning disability; this at a time when we have legislation in this province through the Human Rights Code that specifically recognizes learning disabilities as a distinct group of disabilities.

Based on all that, our association, in spite of some of the recommendations in this brief to you, was delighted to find that we were going to have some consistent and systematic advocacy on behalf of vulnerable individuals. We were very pleased to see that learning disabilities were

mentioned in the first draft of the act. It is unfortunate that the place where they were placed in the description of the various vulnerable groups is rather inappropriate, because learning disabilities are not a physical disability or impairment along the lines of diabetes or AIDS. In a sense it is a minor issue, but in a way it demonstrates exactly the kind of thing people with learning disabilities face: a lack of understanding and a lack of support.

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Currently the primary advocacy role for people with learning disabilities is fulfilled by our association. Our work really goes in three directions: systemic advocacy, making presentations to governments, serving on government committees and so on, which many of the individuals who are struggling along in society can look at and say, "Oh yes, that is all very nice, but really, what good does that do me?" Second, and much more important, we do a great deal of individual advocacy where we have volunteers—we do not have sustaining funding to pay for these individuals—who will go with families to school boards, recreation programs, court, physicians and anywhere else where they require help, and also help with adults who are perhaps facing discrimination in the workplace or in any kind of educational area.

Third, and this is a new area for us, we are very busily developing training for self-advocacy skills for the population we serve. The fact is that we certainly cannot provide adequate advocacy for 800,000 individuals when everything we do is funded through charitable donations. I recognize your work is not about money. I am only raising that issue to try and put into perspective the large numbers and the very little support there is. We feel that advocacy needs are very great for our particular population and we believe that through an advocacy system the government can produce and provide for them. There may very well be a great deal of help for people with learning disabilities.

I would like to touch upon some very specific recommendations we have made to you. I have already mentioned the fact that learning disabilities are placed currently, in our opinion, in the wrong category in subsection 15(1). Because of the very large number of people with learning disabilities and the very diverse needs they have, we believe it should be a separate, distinct category in terms of the work of the Advocacy Commission.

We would like to recommend that section 2 be revisited in terms of defining "vulnerable person." At the moment, one gets the impression that the person who wrote the document felt it was a black or white situation, an either/or. You are either vulnerable or you are not vulnerable. The fact is that vulnerability is along a continuum from the very slightly vulnerable to the very severely vulnerable and people throughout their lives and under different circumstances will vary as to exactly how vulnerable they are. There should be recognition of that.

In subsection 7(1) there should be greater emphasis on the whole business of self-advocacy and supporting and encouraging people to assume as much self-advocacy as is feasible, recognizing there will be times when their self-advocacy skills will fail them or when the system to which they are advocating is so recalcitrant and so difficult that they



will need to call upon another person to help them advocate.

In section 6, where there is reference made to mental and physical disabilities, I would like to urge you to recommend that learning disabilities be also included. I recognize that the Canadian Human Rights Act talks about mental and physical disabilities as the two categories and we also know that in the minds of many, learning disabilities come under the mental disability category. We have no problem with that, provided it is accepted that it really should be included. But in many cases what we find is that people say, "No, it really isn't a mental disability and it isn't a physical disability," and therefore it is left out.

We would like to raise with you the issue of organizations such as ours which grew out of parent support activities. One of the greatest criticisms I have heard of this proposed act has been the fact that it puts the family into a very difficult situation and almost pits the individual who is vulnerable and who requires advocacy against his or her family. I am quite sure that was not the intent of this legislation and we are certainly sensitive to the fact that there are many adults today who could not lead the kind of independent lives they do if it had been left entirely up to their families. Again, I think there has to be some flexibility and a continuum of involvement for families, because in many cases for people who have learning disabilities and some other disabilities the involvement of their family continues to be a very important component.

I would like to make a couple of comments about section 36 which relates to the advocates and the kind of training that might be available for them. It is very important that these advocates really be well trained in all aspects of vulnerability, including learning disabilities, so they know exactly what kind of services, accommodation and support people with learning disabilities require. It is our experience that where people deal with disabilities, usually the primary areas are of course the obvious visible, physical disabilities, and many people feel they have completed everything in supporting people with disabilities when they have dealt with the issue of ramps and elevators and other such things. I recognize the training of advocates will go beyond that, but in the same way that we need more than ramps and elevators, we also need a great deal more in terms of training.

Finally, going back to the whole issue of equity, in a just society taking care of vulnerable individuals is a very important thing. But I think it is also important that whatever comes out of your deliberations and whatever legislation government adopts, it is supported with the availability of services. I cannot imagine a more difficult situation for somebody who acquires an advocate than when that advocate advocates vigorously for a service which is ultimately either not available or is denied to the individual because of the particular problem he has.

**Mr Chiarelli:** I am particularly interested in the issue of the coordination or cooperation between advocates and family members. Particularly, I want to point out that in a lot of the briefing notes and in Hansard the minister and government officials have indicated, and I want to quote, "In the simplest form, advocacy provides a voice for those

who may have difficulty in expressing themselves because of a disability, whatever its nature, and who do not have the support of family and friends to assist them in doing so." The impression is left, with what the minister and the government are saying, that there is almost an exclusivity where the advocate is excluded if the family is there to give support. When I look at the act, it says almost nothing about the family. It encourages family participation but it does not say anything specifically excluding an advocate if there is family involvement with the vulnerable person.

What I would like you to comment on, if you can, is, in practice what has happened over the years if you have an advocate who is recommending a particular type of service or a particular type of protection for a vulnerable person and the family disagrees? In effect there is an agreement between the advocate and the family member to disagree on a particular course. What is the practice now for the advocate and do you see anything in the legislation which provides a precedence or a priority for the family member's opinion in terms of what is in the best interest of the vulnerable person?

**Ms Nichols:** The kind of advocacy that is currently available for people with very severe disabilities is not usually utilized by people with learning disabilities, so up until now the kind of advocacy that has been provided for people with learning disabilities and their families has been through our organization. The kind of approach we have taken in training people to be advocates is to work as closely as possible with the family, very largely because in most cases it has not been the adult who has come to us but usually the family. Even where we are talking about adults who have employment difficulties, one of the greatest difficulties for us is to convince the family that we really need to deal with the adult directly.

When it comes to any kind of a conflict in terms of services, because we do not have a legal status as advocates, generally speaking we do not recommend any one particular thing. A great deal of our work has been in trying to empower families to find what is the right kind of service and the right kind of programming for their children. Similarly, with the adult who is perhaps looking for something, we try to give them as much information as possible but not recommend any one particular issue.

#### 1150

The reason we raise the question of what is going to happen relating to families is that we are already noticing that as a result of certain legislation there are some conflicts arising within the school system. Up to the introduction of the Freedom of Information and Protection of Privacy Act into the school system, the Education Act and its regulations stated that up to the age of 18, for an exceptional student, the parents were directly involved in determining what kind of special education services were there. While it does not mandate that the youngster should participate, it is certainly allowed if that is the choice of the family.

Once the act was introduced, suddenly things shifted. A youngster who is 16 years old is now in charge of the determination of his or her special education programs, etc. It is not so much that we have a problem with that, but



rather the fact that school boards simply have not prepared for this. As young people turned 16, parents were not told that the only way you could continue to participate was if your son or daughter signed a release before they turned 16 to keep you informed. Basically nobody told the kids and nobody told the parents and suddenly we found that we were receiving a lot of calls from families saying: "What is happening? We are suddenly being excluded." In many cases, people with severe learning disabilities at age 16 are not ready to assume the whole task alone.

Our concern in terms of where all this is going to go, since this act is going to cover advocacy for the over 16, is that many people with learning disabilities at 16 are still in school and we hope they will stay there until they are ready to graduate. We would hate to see a situation where the family is excluded even further. I am not sure I have really answered your question.

**Mr Chiarelli:** You did to the extent that you basically explained to me how the system works now. If we can look at a hypothetical situation, if you can address your mind to the particular legislation and try to relate that to the circumstance where you have an advocate who feels very strongly on a particular course of action and you have a family or a family member who feels very strongly in a different direction, what will happen under this legislation?

**Ms Nichols:** As it is currently written?

**Mr Chiarelli:** Yes.

**Ms Nichols:** I would say that the primary decision will be made by the consumer and advocate. I get the impression, and I may be wrong on this—

**Mr Chiarelli:** Who is the consumer?

**Ms Nichols:** The consumer is the vulnerable person. In most cases, the kind of vulnerable people we are talking about do have the mental competence to make decisions about what is right for them, but they need support and guidance and so on.

**The Chair:** Some clarification from Mr Malkowski.

**Mr Malkowski:** I just want to clarify your point, Mr Chiarelli, when you were talking about the act itself. It clearly states the advocate can act as a resource and help people who need advocacy services. If the vulnerable person has family help or family support, then we would just leave him alone. We would not interfere. The second thing I would like to clarify is that the advocate would take direction from the vulnerable person's instructions.

**Mr Chiarelli:** My only comment is that I think there is an area here of serious concern, and that is that we assume in most cases that something will be worked out, that people are acting in good faith, but people acting in good faith can also have strong disagreements, as we all know from working in this particular building. I do not see any solution or direction in the legislation where there are strong disagreements between advocates and the family members. In particular, the response I received was that the decision would more likely be made by the advocate and the consumer, as it was described, and I think some people would prefer that the decision would be made ultimately by the consumer and the family member. I am not clear on

that whole area myself, as a member of this committee and as a member of the legislature. I am going to look into it legally, more precisely from a technical point of view. In the course of these hearings I certainly want to get some feedback from people who are making submissions who are working in the field, but at this point in time I have a grave concern about that gap in the legislation.

**Mr Malkowski:** Again, just to clarify, the advocates will not be responding and making their views known. I just want to make that point clear.

**Mr J. Wilson:** Thank you, Ms Nichols, for your comments on behalf of people with learning disabilities. My mother is a special education teacher, so I have heard a lot of this stuff first hand over the years.

Something you did not deal with extensively in your oral presentation was the issue of cost, which is dealt with on page 7 here. I note there is a concern that there are scarce resources now in the system, particularly for groups like yourselves that are doing advocacy. My colleague Mr Sterling asked this morning that we get a list of not only the groups but the mandates and the current costs of all the different groups out there that are doing advocacy on behalf of the people of Ontario. Would you agree—I assume you would, but I will ask you to expand on this section—that we should not make a decision about a new advocacy system without knowing the context, without knowing which groups out there now are doing advocacy and whether or not we will be drawing money from those groups?

**Ms Nichols:** I would agree with you that it is important that before any kind of new administrative or bureaucratic structure is put in place, somebody should look at exactly what exists. Another point is that I think it is very important that there be much greater collaboration and cooperation among the various new systems that are being put into place.

Before I came here this morning, I was making a presentation on the employment equity plan. One of the things I was questioned on at some length was the fact that I suggested to the employment equity commissioner that for the employment equity commission to undertake tasks of advocacy and training at a time when we are looking to establish an Advocacy Commission and OTAB, the Ontario training and adjustment boards across the province, what I can see happening is that there will be superb structures which will go ahead and function and there will be no money left to serve people who desperately need the services. Clearly, as an organization, we are very concerned about that.

I made reference to the fact that everything we do is with charitable dollars. I would say to you that as far as, say, the corporate sector goes, it no longer sees advocacy as something it should be paying for. We are finding that the two areas of our association's work, which are counselling of families and individuals and individual advocacy, going with the family or the with the individual to advocate on his behalf, is something the corporate sector does not want to fund any longer.

**Mr J. Wilson:** Why would that be? What are the rumblings back from them?



**Ms Nichols:** It is partly that they see government taking that over, and partly, I think, that there is a certain amount of fear within the private corporate sector that the more effective we are in advocating on behalf of people with disabilities in the employment field, the more it is going to cost them. If one looks at it in isolation, you can understand that. When I go with an individual person who perhaps has been denied a particular job and we go and sit down with people, I usually am actually quite successful at convincing the employer that this person can do this job and that it is not going to be very expensive to accommodate him because he will only need a little bit. In the case of a person with a learning disability, it is usually a little bit, but if for every person who comes along, somebody comes and says, "If you just spent a little bit more, you can accommodate this person," they extrapolate from that and can see some major concerns. I think that is part of the reason.

Second, advocacy and counselling are not things on which you can put a name. If we want to make a video, publish a book, create a poster for public awareness, it is not difficult to get corporate money, because they can then point to it and say: "There is our name. Coca-Cola funded this." But when you serve people in a one-to-one setup or support them in advocacy, you do not say to the individual, "By the way, before we get going on here, you should know that McDonald's paid for half of my time and Coca-Cola paid for the other half."

1200

**Mr J. Wilson:** Maybe you could serve a Big Mac and a Coke.

**Ms Nichols:** Indeed. I think that what is happening is that for organizations like mine which do not receive sustaining funding from any source—and that is not all bad, because it does give you a level of independence that perhaps you would not otherwise have—it is a little bit scary that if there is going to be a public advocacy system and everybody will assume that all the advocacy needs will be met that way, but there are not going to be any more services for people with learning disabilities, then our people once again are going to be the ones who are knocking on the door and saying, "We need help."

As an example of what is happening, job coaches are a relatively new service that is now being provided to many people with disabilities. The Ministry of Community and Social Services will not provide job coaches for people with learning disabilities, however much it is needed.

**Mr J. Wilson:** That is really because you have been excluded from definitions to date?

**Ms Nichols:** That is right.

**Mr Malkowski:** Just briefly, there is a point I would like to clarify. You mentioned concern about the family members and the vulnerable person. It sounds as if when there was a disagreement, then the act would support the vulnerable person. I think the act does not want to cause problems between the family member and the vulnerable person. Do you have any recommendations for that kind of situation, if the family member and the vulnerable person are in conflict? How would we deal with that situation?

**Ms Nichols:** I am not sure I can recommend how we deal with them being in conflict, but one thing I think is tremendously important is that both the vulnerable person and the family be as well informed as possible about services and about support systems and about needs so you do not have a situation where people only have half the story and then the conflict arises. In my personal experience of acting as an advocate, I have found that if everybody knows all the information and you can sit down and really share the details of what is possible, you can arrive at a resolution that meets the needs of the vulnerable person and does not leave the family out on a limb. Unfortunately, with systems and structures such as school boards, for example, you very often find that people are not informed and things just roll on and then suddenly you end up with a conflict. I think information dissemination is a very important component of all this.

**Mr Malkowski:** So the advocate then could be the one giving the information to the family members and the advocate can be used as a resource to inform them?

**Ms Nichols:** Yes, especially if the advocate knows what is going on.

**Mr Curling:** Ms Nichols, you are well known for the kind of work you are doing. Also, you told me how exhausted you were coming back from employment equity.

You said many advocacy groups are around. Are you suggesting that the government, or this bill, should look into all the advocacy groups to find out where we can cut costs? We have human rights, race relations, workers' compensation and all the people advocating for the rights of individuals. Are you saying that maybe there is a lot of money floating around within there that could be coordinated and maybe the Advocacy Commission should be looking at all those areas before we decide to put money there, because if we set up the Advocacy Commission, as you said, maybe there will be no money there to give the proper service? Was I hearing that from you?

**Ms Nichols:** What I was saying was that before a decision is made as to how to proceed, not so much with the act per se, although obviously the act mandates the existence of the Advocacy Commission, but before a whole lot of money is put out to create the structure and then begin the hiring of advocates, it should really be looked at as to which are the organizations that are currently holding a mandate from the province to be advocates—for us, for example, our letters patent state that this is what we are there for—and what they are doing and whom they are serving and how efficient they are at doing it, before we go the next step of hiring a whole lot of other people.

For example, it would not make a lot of sense to hire a group of people to be advocates on behalf of people with learning disabilities that would duplicate the kind of work my association does, because I can say to you that what we spend is a minute amount of what might be spent by a group that is sort of part of the civil service. This is nothing against the civil service; it is just a fact of life. Also, we use volunteers a great deal of the time, and while some people might say, "Then aren't you giving the message that it's not very important?" I do not think so, because I

think volunteers really do have a role to play in this. My impression is that the volunteers feel they are going to be disfranchised by this.

**The Chair:** Ms Nichols, on behalf of the committee I would like to thank you for taking the time out to give your presentation today.

ANNE FAST

**The Chair:** I would like now to call forward Anne Fast.

**Mrs Fast:** I got a call late yesterday and I was ill, so if things do not go exactly right, perhaps you can understand. I have difficulty seeing. I am going slowly blind due to diabetes and that, and I do not know whether my glasses are better on than off.

My daughter took sick around the age of 14, a very brave girl, and she went into the hospital. At that time they had another system of committing people. The police would take them before two doctors, not psychiatrists, and they would make the decision. Now things have changed a great deal.

I have had a great difficulty. I tried to organize some of the people. We felt we needed someone to represent us. However, the mental health association did not come to the meetings, nor did they try to help at any time. As a matter of fact, when we tried to organize again, they came in and broke up our meetings. Mainly, I should say, the mental health association is controlled by psychiatrists. Certainly in St Catharines it is. It is not controlled by anyone else. Of course, they have the little ones working down for them.

Actually, I will go back to the other time, not too long ago, in 1989, when my daughter was taken by the police twice to be examined and she was turned down twice. I was living in another part of the city at that time—no, another city—and I could tell from on the phone. I had seen her twice when I went to the justice of the peace, but I never prepared myself for what I saw when I went into the hospital. She looked 90 years old. She had buck teeth. I could not recognize her. I said to the nurses, "Hasn't anybody been in to see her?" This was a Sunday night. She said, "We tried on Friday night, but he said he would assess on the Monday."

There was a clear case of malnutrition—emaciated. She had everything. I tried to get him off the case. He would not get off the case. He was determined that he was going to have his way. It took a long time before she regained her strength. She had not eaten for I do not know how long. When that psychiatrist saw her the Friday night, he should have had enough common sense to put an IV into her arm immediately. The nurse did it. It was ordered over the phone on the Sunday. She went all that time. When we had a review board meeting, I could not believe how a person could live with all those illnesses—her feet swelling and all that stuff.

1210

Dr Grant said, "We took her the time when we should have." What they are going for is imminent danger. They are not following the Mental Health Act. It has been done in Toronto; it has been done in Hamilton. What does "imminent danger" mean to you people? I would say right away. Why they are getting away with it I really do not

know. The police will bring them there under the Mental Health Act. The psychiatrist has the role of mental health—imminent danger. I do not know. Imminent danger, there is no—they said they do not know how long. Some say one day, two days. I think this is something that should be picked up. There are too many people on the streets because of this imminent danger. I think as long as this is allowed to go on people will die.

I brought it up before the college. It is going to be a long time before the college is ever going to acknowledge that mentally ill people and their families have a right. Then it went to that glorious Health Disciplines Board. They are worse. I understand they are locked in, but I wish they were locked out because I did not see one intelligent one there on the board or any intelligent questions asked. As it stands right now, I am going to write to Mr Rae again and the Ombudsman to see if we cannot take it before a legislative committee, which I think we should.

I am going to say again that about a year ago my daughter was hallucinating very badly. She called 911 and said the hospital was on fire. I guess all the trucks went down and eventually the police charged her. I had to tell her, "Nancy, you've got a charge against you by the police." She said, "I didn't do anything wrong." She does not know.

This lawyer came upon the scene. He had one remand. I said, "Look, my daughter's getting sicker and sicker." And then a second remand and a third remand. I said to the judge: "My daughter needs to be in a hospital. She needs to be in a hospital now." The lawyer said: "Remand, remand. I'm going to get right at it with the"—what do you call them? Anyway, he said, "We're going to fix it all up with the crown attorney." The next time, the fourth time, remand again. I think I went to court about seven times. After the second time she could not go; she was too sick.

Finally it ended up that Nancy went to jail. She was saying to me: "Mommy, why am I here? What have I done?" I found out before the last hearing that this lawyer was sitting on the board of directors with this Dr Peter Grant of the Canadian Mental Health Association, and there was the connection. This Dr Grant has been after me for years for speaking out and Nancy paid the penalty for the sins of her mother for speaking out. I am hoping this is going to be looked into.

One policeman said, "If you are so worried, Anne, go to a justice of the peace." I went to the justice of the peace and he said to me, "You haven't proven to me that your daughter is in imminent danger." Then I went to another one. He was fairly rational for a while and he asked me questions over and over again. He said, "What's happening right now?" How could I know what was happening right then? My daughter was someplace else. I am not a psychic. I thought that was terrible.

I am going to ask somebody to look at this trial and hear those two tapes because I think this is something people should know. It is going on. This imminent danger is going on. It is not right. The police are mad; the police bring them there. At first Nancy was in jail in St Catharines and then she was transferred to Hamilton. I told the police, "It's that mental health association." He said, "You've got that right, ma'am." A lot of the policemen know that. They



have power; they are like a giant. If you keep feeding the giant, it is going to get bigger. They are fed money through the United Way.

I sent for an income tax report of the mental health association in St Catharines. I could not believe, for the little they were doing, how much money they were getting, and not only that, they had a grant from someone else. I think these organizations should be looked into. Right away when they say "mental health" they think, "Oh, we're doing all these great and wonderful things." They are doing them with other people's money. They are not using their money. I think it should be looked into.

Right now I still do not have help for her. If you were to stay with these people when they are hallucinating and having delusions, it is frightening. I was there for three hours with her in her apartment. She cried and laughed and cried and laughed. If a psychiatrist or anybody else took 10 minutes, that is all it would take. It would change your minds about a lot of things.

I have been called the worst things. That psychiatrist spread around that I was mentally ill. Of course he denied it in the report. The things he wrote about my daughter were "foul" and "filthy." He had on there, "She is filthy." My daughter, when she gets mentally ill, does get dirty. That is part of the disease. It is not with everyone; with my daughter it certainly is. Her hair is not combed at all. She looks bad. He said she is violent. I think 12 people he wrote—she is violent. That is all you have to say, because that word, "violent," is going to turn somebody off. "Violent, filthy and dirty" is what he wrote. You just turn people off.

I am in favour of an advocate. I wish I had one right now to take the burden off my shoulders. I have angina in my heart. My arteries are no good. I have fever as a result of rheumatic fever as a child. I am a diabetic with severe hypertension. Consequently I have a haemorrhage in both my eyes. They keep telling me, "Mrs Fast, keep your high blood pressure down." Whenever something like this happens, there is not one soul we can turn to. If I had someone who would come in and say, "Anne, I'm going to take over for 10 minutes," I would really be happy. My daughter is out there somewhere and she needs help right away.

**The Chair:** Thank you, Mrs Fast. If you would not mind, would you allow time for questioning now?

**Mrs Fast:** That is fine.

**Mr Curling:** Have you brought this matter to the Ontario Human Rights Commission, or have you put your case to someone? I am talking about another form of advocate now, before this formal advocate group is in place.

**Mrs Fast:** No, I have not; just to members of Parliament. That is all. I tried the Ontario Human Rights Commission and they said it was not their job to do that. The Ombudsman, too, cannot look into it very much. There is nothing out there. We need a committee that is going to look into all of this. It should not go to the Ombudsman's office. It should not go to the College of Physicians and Surgeons of Ontario. For the mentally ill they do nothing. There should be a committee that will say, whether he is a psychiatrist or not, or a nurse, "You treat a person in a humane manner." I had a bad experience with the Ombudsman's office. I do not think they are worth their money.

**Mr Curling:** May I make a suggestion? I am not quite sure if the committee itself plays this role, but it seems to me there are two important things you mention here. One is the immediate help you need for your daughter and what is happening. I think there are many of us around here who play the advocate role from time to time in assisting constituents to get through some of those very difficult times. The other aspect is, and you have made the case of saying it, is how important an advocate could be even when there are family members around, like a mother here. The advocate could play an important role.

My suggestion is that maybe you could leave the details with the Chairman, because of the formal process, and see how you could be helped and what is happening in that case. I have no other questions. I would just say that the point you make actually is one of the reasons for the importance of the Advocacy Act.

**The Chair:** On behalf of the committee I would like to thank you for coming and giving your presentation. I must say that I am quite glad you did not have an advocate today because nobody could speak it the way you did.

**Mrs Fast:** Thank you very much. I could have stayed here for 10 hours really. We do need help. The families need it. The people who are mentally ill need it. I hope some good will come out of this.

**The Chair:** We now stand recessed until 1:30 promptly.

The committee recessed at 1221.

## AFTERNOON SITTING

The committee resumed at 1338.

ADULT PROTECTIVE SERVICES  
ASSOCIATION OF ONTARIO

**The Chair:** Good afternoon. Could you please identify yourself for the record and then proceed.

**Ms Pearsall:** Good afternoon, my name is Ginny Pearsall.

**Ms Haveman:** I am Alice Haveman.

**Ms Pearsall:** I would like to thank the members of this committee for providing us with this opportunity to address them. I would also like to take this brief opportunity to introduce ourselves. Alice Haveman is an adult protective service worker from the Hastings and Prince Edward counties area. She covers central Hastings, which includes the villages of Tweed, Madoc, Marmora, north to Gilmour, south to Foxboro and the vast rural area in between. Alice has been involved in adult protective services since 1983 and currently sits as vice-chair of the Adult Protective Services Association of Ontario and chair of the southeast chapter.

My name is Ginny Pearsall. I am also an adult protective service worker from the Hastings and Prince Edward counties area. I cover exclusively the beautiful island of Prince Edward county. I have been an adult protective service worker for the past six years and also served as a past executive on the provincial board.

I would like to point out at this point in time that it is a prerequisite within our agency that an adult protective service worker live in the same community in which he or she works and supports people.

The standing committee is in possession of two previously submitted papers from our association, one dated September 1991 regarding Bill 74 and one dated October 1991 regarding Bills 108 and 109. Our colleagues Mr Gianni Corini and Mr Steve Tennant will be expanding upon Bill 74 later this week. Today Alice and I will be expanding upon the second submission on Bill 108.

We are here representing the Adult Protective Services Association of Ontario but, more important, as adult protective service workers. It is our role to advocate on behalf of adults in the community who have a developmental handicap and as such we must follow the direction given to us. We support the stand of People First in their unanimous resolution to oppose all forms of guardianship law. We hope to substantiate this stand within this document and provide this committee with specific examples of our concerns around some sections of Bill 108. I would also like to point out at this time that the Centre Hastings Support Network Inc endorsed the views we will be putting forth within this document.

We urge the committee to seriously listen to all groups of vulnerable people representing themselves or those persons representing them under the direction of vulnerable people. These are the very groups Bill 108 is attempting to protect and their input is in our view the most important, as it is their lives that will be impacted by this act.

**Ms Haveman:** I am just going to back up a little bit and give a very brief summary of the adult protective services program and let you know that when we say APS we mean adult protective services. The program itself has been in existence since 1974, specifically to support adults who live in the community who have a developmental handicap. That means that persons who reside in group homes, institutions, nursing homes etc are not covered under our mandate.

This is a voluntary relationship in that the individual must consent for us to assist him and has the final say in any direction or decisions that are being made. The major emphasis of the APS role is to provide information and options to assist the individual in directing his own life. This generates a trusting relationship with respect and dignity in which the individual can express himself safely and, with his consent, the APS can then assist him to pursue what he wants with relevant other persons by either accompanying and supporting him to vocalize, which is self-advocacy, or speaking on his behalf, which is advocacy. I have to emphasize that when we say speaking on their behalf, we mean doing and saying what they have previously told us. It also creates circumstances where we are in fact assisting individuals to do things which we as individuals personally do not believe in, but we must continue and support them because it is what they want.

Bill 108, we feel, circumvents the progressive adult protective service system and turns back the clock to a time when vulnerable people were denied their basic rights and privileges. While the protection of vulnerable people is the intent of this piece of legislation, it falls short of meeting this goal and leaves individuals in the position of proving their capabilities in the face of an ambiguous act that is open to many interpretations.

In early 1970 the Conservative government studied guardianship legislation. That basically came out of the fact that there were a lot of institutions closing, a lot of people moving out of institutions, and their concern was, how are these people going to exist in the community? The result of looking at the legislation was not to create a new act; it was in fact to develop the adult protective service program, recognizing the philosophy that vulnerable people are capable of making decisions but many times they lack information, options, ability to express themselves and supportive relationships due to negative stereotyping. The APS program has proven that this philosophy is an alternative to guardianship legislation, as it has successfully promoted dignity and self-determination for people labelled as developmentally handicapped. Creative, community-based efforts that facilitate the development of support networks for vulnerable people eliminate the need for guardianship legislation.

The following is an example of a lady who lives in our community, in a small village with approximately 1,500 people. She is 64 years old. She was widowed when she was approximately 34. She had four daughters, the oldest of whom was eight. She did have five; one of them



drowned about a month after her husband was killed in an accident. She has never had any relatives to rely on. She has a sister who lives in the Oshawa area.

Mrs Marcus had suffered a brain injury when she was very young and as a result she has epilepsy. She also has very specific impairments of the brain. She hardly remembers anything. I can go into her house. She knows me quite well when she sees me. To remember what my name is—she would not remember. To remember to call me if something happens, most times she does not remember. To know to call the police, to know to do a lot of things, she does not know how to do it. She cannot write. She can sign her name.

How can an individual who lives with these impairments survive in a community by herself? She lives in her own home. She cannot balance her chequebook. She has no idea about income tax and she has many things that she is incapable of doing.

The reason she maintains herself in our community is because the community assists her. There is a list of things here the community does to help her, right from the pension cheque directly deposited in her bank account; they pay her phone bills and her taxes; they take money out when she asks for it; they fill out the slip. If there is a cheque that comes through they consider might be questionable, they give me a call as the APSW and say, "Maybe you should take a look at this before we make payment on it." She comes to me when she has a purse full of bills. She troops off to the post office and comes walking through the door and says: "I've got these letters. I don't understand them. Please help me figure them out." The hairdresser calls her every Friday and says, "Your appointment's in an hour." Meals on Wheels delivers meals to her Tuesdays and Thursdays. She has frozen meals the rest of the week so we know she is eating properly. The Victorian Order of Nurses come in once a week; the homemakers are in once a week. The grocery store delivers her food. Church members get her back and forth to church. The town ensures that her taxes are paid. They come to her door and say: "It's time to pay your taxes. It's time to get a new dog tag." The entire community knows who she is and where she lives. If she falls down on the street with a seizure, people put her in their car and take her home.

Over the last couple of years she has spent some time becoming confused, concerned. People are taking things. The OPP became concerned and basically came roaring into the office one day and said, "Who takes care of this lady?" Whereupon I stood up and said: "Well, nobody takes care of her. She sort of does it herself." That was not very clear to the OPP. They felt that someone should be making decisions for her. We got together a meeting of people in her life, including her family members—her daughters all live in the Toronto area now—and came up with some very clear decisions about who was going to help when, telephone, cheques, the whole nine yards. Then I went back to the OPP and said: "Come to our brown-bag lunch. Please ensure you're there. We've got someone from Alzheimer's, someone from the seniors' program. Come and hear what they have to say." The OPP then said, "Okay, how can we help?" They turned around and started

doing police checks, driving by her house, making sure she was fine. It all works together very well.

The next step was that we tried to decide, how are we going to establish why this lady is becoming more confused? There is an issue here. It is not all the time; it comes and it goes. How do we find out?

We decided we would send her to the local psychiatric hospital to have the psychogeriatric team take a look at and see if they could figure out the reason. Their recommendation was nursing care: "Put her in a nursing home. She can't survive on her own. She can't remember." I remember their exact words were, "She can't add two plus two, and she cannot repeat a statement back to me when I say it to her."

### 1350

This lady is still living in our community. There is no guardianship to take away the independence she treasures. She is aware of the areas in which she needs other people and must depend on them, but she also knows that she directs her own life with the help of those she trusts. The APS program has fulfilled its mandate of advocacy and support and has assisted this lady to continue to live in the community she chooses and in the manner she wishes, with the ability to maintain her rights to make her own decisions with dignity and respect.

**Ms Pearsall:** It must be stated that the Substitute Decisions Act is, at best, an archaic piece of legal verbiage that is in direct conflict with the Canadian Constitution and the Charter of Rights and Freedoms. It manages to protect those around vulnerable people but in no way supports the rights of the individual who is vulnerable. It does in fact force vulnerable people to prove themselves yet again. The definitions of "incapable of managing property" and "incapable of managing personal care," sections 6, 25, 46 and 55 respectively, on which the entire act is based are ambiguous and open to such a varied range of interpretations that every person currently supported by an APSW in Ontario could conceivably be found incapable.

We know this is not true. To suggest that the advocates proposed through Bill 74 will be able to effectively assist each and every person to prove they are capable is unrealistic. The basic reality of some 150 advocates to perform the roles as outlined within Bill 108 and Bill 109 across the province is nothing less than ridiculous. The approximate 175 APSWs now in place find it extremely difficult to meet the advocacy needs of persons with a developmental handicap who live in the community. This does not include any persons who reside within institutions, group homes, rest homes or nursing homes. It is inconceivable to imagine the new advocates will be physically able to protect this group plus the remaining population of vulnerable people in Ontario.

It can also be perceived that every residential program in Ontario will consider it necessary to protect its agency and demand that all persons living in its facilities must have a substitute decision-maker. Forgetting the impact this mass-incapacity finding has on vulnerable people, this policy realization will create a tremendous influx of applications the advocates will not be able to address. While current residents are being processed to obtain a substitute



decision-maker, applications to residential facilities will be denied unless one is already in place. With waiting lists now at two to three years, this is a devastating vision. This act will create a legal paperwork process and a bureaucratic nightmare with a vulnerable person potentially having three new strangers, or advocates, suddenly in his life: one to assist with the application for guardianship, one for case management services and one to address the systemic issue involved with the first two advocates and the application process.

**Ms Haveman:** For those of us in society who may never have our capacity to make decisions questioned, this potential may not be a concern, but for those people already labelled, an inappropriate application and/or finding of incapacity is a disturbing reality. Just as a label of "mentally retarded" gives society a perceived right to make inaccurate assumptions and judgements, a finding of incapacity to make decisions may be misinterpreted and provide people such as physicians, social workers and family members the ability to make intrusive decisions about an individual.

Ron grew up on a small dairy farm. He turned 48 last week. He was born the youngest of six daughters—the son who finally arrived. At the age of one he contracted a high fever and as a result is marginally developmentally handicapped. He attended a local one-room school and learned how to run his family's farm. When his siblings left home and his father passed away he continued to run the farm with financial assistance from his mother's school teacher pension. Ron was just another farmer down the road at the local co-op, the sales barn and in the neighbourhood. In 1981 his mother passed away, leaving the farm and everything on it to her son, trustee by three of her daughters. After five years the trustees, Ron's sisters, decided the farm was not making any money and sold it.

What happened to Ron? They bought him a small house in the country, arranged for a trust company to invest the proceeds of the sale—which was over \$100,000—receive and pay his hydro, telephone and taxes and send \$350 to a grocery store which was 15 miles away from his home.

It is difficult to appreciate the indignity of standing at a checkout counter and having someone tell you that you do not have enough credit to buy what you have and you must put things back, especially when you do not even know how much was there in the first place or when it arrived at the store; to have your sisters call and tell you your hydro and telephone bills are too high when you have never seen a bill and they will not send you one; to have no cash in your pocket at all so you cannot even buy a cup of coffee, but you have to come up with money to pay for your car insurance and to pay for your gas as you are living in the country; to be asked to sign a lease in your best interests that states that if the home is not clean to exact specifications—if visitors stay overnight, if animals are allowed in the house, and there is a list of about 12 different things—your sisters will evict you from your home in 20 days, a home paid for by money from your own estate and left to you; to not understand the document and trust the good intentions of your sisters, and have them refer to the lease as they put on white gloves and go through your entire house, get down on their hands and knees and smell the carpet, open

up your cupboards and look through; to treat you as retarded, send you no cash and tell you to get a job in a depressed area. You have no skills but that of a farmer.

To this day Ron has an estate valued at over \$144,000 and is on welfare. This is because the local municipality has agreed to grant him welfare barring the legal process in which he will be expected to pay back. The APSW program is assisting with legal intervention around the will, the inappropriate trusteeship and the denial of FBA disability. All of this intervention with him has not stopped the process of turning a farmer into a vulnerable handicapped man. People who knew him while he was on the farm have commented on how downhill he has gone. The inference from his siblings that he is not capable has caused him to question his capacities and the new community sees him as retarded. A productive citizen has been turned into a vulnerable person by the implementation of "protection for his own good" trusteeship which totally disregards his abilities and expressed wishes. All this while Ron now contemplates suicide.

It is our request that the standing committee on administration of justice seriously consider the potentially devastating effects of enacting legislation that will lead to the removal of decision-making rights of people who are already experiencing discrimination and diminished social status. The time and energy required to endure the capacity review process could and should be used for facilitating the development of support systems for people who may not have natural access to such support or need assistance to organize support that follows their wishes in an informed manner. This alternative will also prove less costly to the taxpayers of Ontario.

As stated in our earlier submission, APSAO continues to have serious concerns about the development of partial guardianship. Drawing your attention once again to the definitions of "incapable," the act leaves no sound legal parameters for the vulnerable person, his advocate, the person making the application or the court to base a judgement on. This leaves the door open for professionals, families, the assessor and the courts to perceive that partial incapacity is the least intrusive finding and not as bad as complete incapacity. We put forth that any finding of incapacity at whatever level is intrusive and in no way benefits a vulnerable person. The realism of partial guardianship for Ron fully supports this.

**Ms Pearsall:** I would like to speak now on the assessment process. The definition of "assessor" is again ambiguous and open to interpretation to suit the individual circumstances of the applicator. The definition has a lot of words but in essence does not mean or say anything. The definition reads: An "assessor" means a member of a class of persons who are designated by the regulations as being qualified to do assessments of capacity." Bill 108 is the regulations and there is no mention of whom this class of persons is except to mention on the last page that the Lieutenant Governor in Council may designate this class. He or she may also prescribe forms and prescribe a fee scale for compensation of guardians, which conjures up many visions of perversions.



We have pointed out the inappropriateness of the psychiatric field in assuming this role through Mrs Marcus's experience with the psychiatric field. Many other examples could be provided. To suggest that the medical field of family doctors is a viable body of available assessors is also unrealistic. This overburdened group of professionals must rely on information provided by those accompanying a vulnerable person, as time does not allow them the privilege of getting to know the individual in order to arrive at a knowledgeable decision. Do we create yet another body of trained professional assessors to meet the needs of this act in the face of today's economy?

The introduction of this act without specification of qualifications and/or training for assessors, including written clauses for relationships to persons in question and the applicant in terms of conflict of interest, is a serious omission.

1400

According to this act, the assessment process is only applicable when the person is admitted to, or resides in, a psychiatric facility. There does not appear to be an assessment process in place for those who have always experienced difficulty in expressing their wishes and have always been vulnerable. It appears they receive court-appointed guardians, based on sections 25 and 55, which are again ambiguous and cross-referenced to the definitions of "incapable." It would appear the vulnerable person's only course of action is within the court system. However, there is no reference to the vulnerable person being able to choose whom he wishes to represent him or whom he wishes to participate in the investigative process addressed in subsection 69(1).

It should be a mandatory part of this act that interviews take place with people of the vulnerable person's choosing during the information-gathering stage and this document be sent to the public guardian and trustee's office with the other declarations. Further, it should also be mandatory that the vulnerable person sign the original application, with the advocate as a witness, before the document is forwarded.

There is also no section within this act that allows for the vulnerable person to choose whom he wishes to be his substitute decision-maker, or avenues to refuse others' choices. We must dispel the myth that all family members have the best interests of relatives at heart. While we do not negate the many positive relationships within families, we must also recognize that family members are not excluded from collusion, promoting self-interests, or physical, sexual or financial abuse.

Any form of guardianship legislation must have, included within the act, written clauses to consider the vulnerable person's wishes as to whom he feels would act best on his behalf. It must also contain clearly written statements as to how an individual can contest choices made by others. To do less would totally remove all of the individual's rights as a Canadian citizen.

**Ms Haveman:** In this country people are assumed innocent until proven guilty. This act treats vulnerable people as criminals without allowing them the ability or resources to offer a defence. Sections 73 through 76 force an individual

to a complete invasion of privacy without consent, explanation or support throughout the process. Clauses 75(2)(a), (b) and (c) use the words, "submit," "permit" and "attend," speaking more of a person who has committed a criminal act rather than someone who is in need of assistance to understand alternatives, help available and protection.

The act goes on to speak of the vulnerable person being taken into custody, which further accentuates the individual's feeling he has done something wrong. In other existing legislation it is recognized that the offender is to be removed, not the innocent party; the onus is not put on the innocent to prove he is or is not capable because he had, up to said point, chosen to stay in what we deem as an unsafe environment.

The illogical step of this act is to protect the persons responsible for the neglect and subject the victim to complete invasion and life-changing bureaucracy without his consent. We then take the major leap of immediately subjecting the victim to legal questions of his capacity to make decisions. Do we also bring every individual in a battering relationship to court automatically once we have "rescued" him to ensure he has substitute decision-makers to stop such a situation from happening again? Has the battered-wife syndrome and the Stockholm syndrome taught us anything, or does this just apply to what we perceive as capable people?

The government of Ontario must follow the recommendations put forth by the courts following the Joseph Kendall trial and enact legislation that ensures a process to remove and charge the perpetrators of abuse and neglect of vulnerable people so that the victims are not the individuals to experience the indignities of legal intervention. The Ontario Provincial Police must be given the legal backing and mandate to enact this, much as they have recently been given within abusive spousal relationships.

The final indignity brought about by this act is that after individuals have had their right to make decisions, in whichever form, taken away, they do not have mandatory access to reports of any kind. Section 64 states that the keeping of proper records and the writing of an annual report must be performed by the substitute decision-maker, but it does not require that this report be submitted unless requested and does not specify by whom this request can be made.

The submission of an annual report to the vulnerable person, the person's advocate, the Advocacy Commission or public guardian and/or trustee's office should be mandatory, and I underline here that the number one person should be the vulnerable person.

In summary, the Adult Protective Services Association of Ontario fully supports the implementation of an advocacy system for all vulnerable people in Ontario. Bills 108 and 109 make many references to the advocate being involved in the legal processes of these two acts, which we perceive to defeat the purposes of advocacy. Effective advocacy requires a trusting relationship. With the Advocacy Act tied so closely to the Substitute Decisions Act and the Consent to Treatment Act, the role of the advocate may rapidly evolve into that of an expert in these two legal aspects. This detracts from the original philosophy and premise, being to support individuals and to give them

opportunities to direct their own lives as much as possible. Many vulnerable people require time to express themselves and/or someone to spend time with them to learn their language, their personalities, their hopes, their dreams and visions for their own future and thereby receive their instructions. None of these acts allow for this process to take place.

The word "ambiguous" has been used many times throughout this presentation and it, regrettably, is the best adjective to describe the legal outline and ramifications of Bill 108.

The Substitute Decisions Act leaves vulnerable people in the position of proving innocence in the face of guilt. Even the language of the act, after the application is made, immediately calls them incapable. It leaves them more vulnerable to invasion of privacy, subject to yet further discrimination, diminished social status, respect and dignity, no legal right to choose whom their representative will be, be it in the form of guardian, substitute decision-maker or advocate. There remain no legislated avenues for a vulnerable person to receive community-based creative support, which has proven to successfully circumvent the need for guardianship in the past and is the stated philosophy of the current government. This new act appears to have created a new title for the word "guardian" by using "substitute decision-maker" and has fostered the notion that people can be "partially incapable" and need legislation and the courts to deem them so.

It is the belief of the Adult Protective Services Association of Ontario that the tremendous impact of Bill 108 becoming law on the lives of vulnerable people in Ontario must force this creation into retirement once again. If even one concern we have raised can be seen as a possibility, it should be enough to prompt us to review Bill 108 in terms of "protection for whom?"

**The Chair:** Thank you very much. You went slightly overtime but I will allow one question from each of the caucuses if they so desire.

**Mr Poirier:** No, that is okay. The picture is quite clear. Thank you.

**The Chair:** On behalf of the committee I would like to thank you for taking the time out to appear before the committee. Oh, Jenny, sorry.

**Ms Carter:** You weren't looking at us, Mike.

**The Chair:** The problem is that there are three people who have indicated they would like to speak.

**Ms Haveman:** We will answer fast.

**Mr Winninger:** I will defer to Ms Carter.

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**Ms Carter:** The thrust of what you had to say was mainly directed at Bill 108 and I think your point is very well taken. Your case histories were very powerful indeed. The man you mentioned, Ron, is in this situation under existing legislation. He has a problem. Would the Advocacy Act not help him solve that situation, because he would then have somebody to speak to him from his side about the inappropriate guardianship under which he now is?

**Ms Haveman:** First, it is not a legislated guardianship he is under; it is under the will left by his mother. Second, there is an advocate in place in the form of an APSW who has taken legal intervention. The example more or less was put forward because his financial and property management has been taken away from him by his mother's will and that portion taken away from him has led to his becoming virtually incapable, or his perception of being incapable.

**Ms Carter:** But I am wondering whether under Bill 74 the advocate would not in fact have more power to effect change in that situation than is now possible under the APSW.

**Ms Haveman:** It is a legal question. It is a legal court question. Fighting the will is really what it boils down to.

**Ms Carter:** But advocates are going to be able to effect systemic change where they find there are problems out there and that might be one place where that over time might happen.

**Ms Haveman:** That is quite possible.

**Mr Poirier:** I quote you when you were describing the situation with Ron, and I know you meant no harm or insult, "to have no skill but that of a farmer." I know what you are saying, but coming from a farm background—

**Ms Haveman:** So do I.

**Mr Poirier:** I think a lot of the farmers have skills.

**Ms Haveman:** Yes, you know what I meant.

**Mr Poirier:** Right.

#### METROPOLITAN TORONTO ASSOCIATION FOR COMMUNITY LIVING

**The Chair:** I would like to call forward next the Metropolitan Toronto Association for Community Living. Good afternoon. Could you please identify yourself for the record and then proceed.

**Mr Reynolds:** My name is Fred Reynolds. I am the executive director of the Metropolitan Toronto Association for Community Living. I would like to introduce the speakers today and give you a little bit of background about our task force at MTACL.

The board of directors decided to form this task force some time ago because of our interest, obviously, in the legislation. MTACL also belongs to a coalition of agencies across Metropolitan Toronto. It is important for you to know that the MARC group, the Metropolitan Agencies Representatives' Council, was invited to appoint members to this task force and quite a number of the over 50 agencies in the MARC group had input to what you will be hearing today. Specifically, they had members on the task force from York Community Services, Reena Foundation, Surrey Place Centre and Surex Community Services. Other interested people also were involved in the task force.

I would like to introduce to you the chairperson of our task force, Lynn Hastings. Lynn is a board member of MTACL, a lawyer and has a family member who is developmentally handicapped. The other person who will be speaking to you is Cay Shelden. Cay is the past president of MTACL, has a son who is developmentally handicapped, is a businesswoman in her own right and has had



considerable experience both with the Metro association, the Ontario association and the Canadian association. The gentleman between these two ladies is Graham Baldwin, who is their staff support person to the task force. Lynn Hastings will start off on behalf of the task force.

**Ms Hastings:** Good afternoon. The task force would first like to address its concerns with respect to the Advocacy Act. We believe that as it is presently drafted, the Advocacy Act may not apply to those persons most in need of an advocate. There are a number of sections in the act which require the vulnerable person's consent or imply that the consent is required. The task force is concerned that if the vulnerable person does not explicitly give his or her consent in traditional ways, an advocate may not be assigned to that vulnerable person. Support for this position may be found in clause 7(1)(b) and subsections 24(1) and 30(5) and (6).

If this interpretation is correct, those vulnerable persons who are most in need as a result of the severity of their handicaps will remain isolated simply because they are unable to give instructions in traditional ways. The act must provide for non-instructed advocacy to ensure that those individuals with the most serious handicaps will be given a voice.

Some say that those persons should and will be assigned a guardian under the Substitute Decisions Act, but a guardian is not an advocate. A guardian, according to section 6 of the Substitute Decisions Act, is concerned with the health, nutrition, shelter, clothing, hygiene or safety of the vulnerable person. An advocate, on the other hand, will strive to ensure that the vulnerable person's life is enhanced and to make sure changes are made in the vulnerable person's life that will allow the vulnerable person to lead a more rewarding and fulfilling life.

The second section in the Advocacy Act which concerns the task force is section 15. This is the section which describes the organizations which will participate in the nominating process to the appointments advisory committee. The association for community living has as its members, parents, relatives and friends of those who are developmentally handicapped. Because subsection 15(2) requires that an organization which wishes to participate in the nominating process has, as a majority of its members, persons whom the organization represents, the association for community living will not be able to participate in the nominating process.

Again, it appears that the most severely handicapped of vulnerable persons will be ignored. They will not be given a voice to nominate those persons who will ultimately be making decisions which affect their own lives. To ignore the fact that family members, partners and friends positively influence the life of a vulnerable person is to ignore the best advocate whom a vulnerable person often has. The task force believes that subsection 15(2) should be amended to include organizations which also represent the family or friends of the vulnerable persons.

I would like to now call on Cay Shedden—as you have been told, a parent—to relate to you how the Advocacy Act as presently drafted would have affected the life of her son.

**Mrs Shedden:** Thank you very much. It is a great pleasure to be with you this afternoon. I would like to introduce you to my son John. John will be 30 in March of this year. He participates at the present time in horseback riding, swimming and goes to a day program, but John is one of the most vulnerable of all handicapped people living in Ontario.

John at the age of almost 30 is not toilet-trained, does not totally self-feed, is non-verbal and does not communicate in any way other than his eye contact and his expressions of pleasure. John, had we listened many years ago to people who would have become his guardians, would have ended up in places like the Huronia Regional Centre where people like John were confined 42 to a room, two staff people and no opportunities to be in the world. John has lived at home. John is part of his community because instead of having a guardian for a mother, he had an advocate.

Advocacy in John's life has been essential. In the beginning he was not even accepted by our association. He was not accepted into school. He was not a part of the community. There were no services anywhere. Because a group of us who chose to keep our children at home advocated on their behalf, they now live successfully in the community, are contributing members. You cannot believe, unless you take someone like John for a walk, what he gives to the community.

It is the sense of caring. In fact, this morning when I was at the hairdresser's I had someone say that she had not seen John for a while and ask what was wrong with him and where was he and was he well and had he had to go back into hospital. He has made the community a very caring place. When we opened the group home for John seven years ago, the community was not sure they wanted a group home on their street. This is a very nice street. Margaret Birch lives there. Ed Moran, who was the head of the OMA, lives there. It is a very nice street.

The people knew John and they felt that John had the right to live in the community, so our community became advocates. Not guardians who worried about whether he was fed and dressed, but advocates about his right to be a participating member of society.

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He has changed the lives of several young people I know who have gone into the work. He has opened doors for countless other people whose parents were not quite as vocal. The young people he lives with in his house at present were living in subhuman conditions in institutions. They were there because guardians said that this was the best place for them. They were fed, they were dressed, and they were looked after. They now live in the community, in a house that costs no more money. They contribute: some of our people who are non-verbal, who lived in locked conditions in institutions, are now helping to deliver meals for senior citizens, all because people advocated on their behalf.

If this legislation goes through in its present form, people like John will not be allowed to have an advocate—they will have a guardian. People who do not have parents who are quite as aggressive as John's mother will be left with no one to fend for them, no one who will speak for them beyond their care and in a very peripheral manner.

The kinds of doctors who decided when John developed an acoustic neuroma, who thought about his quality of life and decided that really he should not have surgery, will be listened to, because a guardian does not realize that a person should have the rights of every other person.

John, because we got to another doctor, who looked at him as a person with rights—we in Canada are great on human rights for people coming into our country, but sometimes the people who have been here from the beginning are the ones who are most overlooked. The most vulnerable people amongst us have something to give to the community, and the community gives back to them. It is a wonderful opportunity for people to live and grow in their own homes, but this does not happen if they are only allowed to appoint an advocate and have a guardian who is appointed for them.

I urge you to rethink this legislation. Guardianship is not suitable for anyone, in my humble opinion. Advocacy is the only way to go. There are many thousands of young people out there who require the services of an advocate to speak on their behalf. Parents in many cases are too overwhelmed by the work and worry. An advocate can speak and make some wonderful things happen for this person. I urge you to rethink this legislation so that an advocate becomes a right to every person, not guardianship.

**Ms Hastings:** Thank you, Cay.

Now I would like to turn to the Substitute Decisions Act. The task force believes that the establishment of a tribunal or board is the preferable venue to appoint a guardian rather than through the courts, if a guardian is to be appointed at all.

As we all know, the courts are backlogged. They are time-consuming and they are costly. We believe that it may intimidate persons who are trying to act in the best interests of vulnerable persons to go through a court system. A board member or board members will have the experience and sensitivity necessary to deal with the matters of guardianship, as opposed to judges who see a wide variety of cases every day and do not have the opportunities to develop an expertise in the area of guardianship.

The task force also believes that the act should contain provisions which recommend that wherever possible the guardian be a family member, spouse, partner or friend. Obviously, the office of the public guardian and trustee should only be appointed as a last resort. We believe this issue is of sufficient importance that it merits a section clearly delineating those persons who make preferable guardians.

Finally, our greatest concern is that which surrounds the provisions of personal care. The task force supports the provisions that govern the power of attorney for personal care. However, again, we have great concerns with respect to the appointment of a guardian for personal care. As presently drafted, the act requires that there be a finding of "incapacity" before a guardian will be appointed.

It has long been our position that the need for supported decision-making does not need to be contingent on a finding of incapacity. Such a finding denies persons their rights and communicates to the public that those persons do not have the right to make their own decisions. These

perceptions only serve to maintain the barriers to one of the primary goals of organizations like MTACL, which is community integration. We suggest that a finding of a "need for supported decision-making," not a finding of incapacity be the criterion for appointing a guardian.

We would like to thank you for your time in listening to our submissions. If you have any questions at this point, we would be happy to answer them for you.

**Mr Poirier:** I am trying to decipher where you are coming from or where you want to go to. Being a devil's advocate, are there some situations where people need a guardian as opposed to an advocate, or both, or what? Can you make such a distinction? Is that possible?

**Mr Baldwin:** Our feeling on that would be that certainly the Advocacy Act would have some impact on need for guardianship. If good supportive advocacy was available and the appropriate supports within the community were available I think there would be far fewer individuals in need of guardianship. To determine to what extent people need guardianship without those other pieces in place would be counterproductive, I think. You are addressing the wrong issue.

**Mr Poirier:** You are trying to minimize the number of people under guardianship?

**Mr Baldwin:** Exactly.

**Mr Poirier:** Okay, but you are saying there are probably some circumstances where you need guardianship. Is that correct?

**Mr Baldwin:** In addition, what we are saying is that a guardianship is ideally vested within relationships that the individual has. It should be first and foremost the responsibility of an advocate to facilitate the kind of relationships that then can be considered in the context of need for guardianship.

**Mr Poirier:** Does that make your definition of advocate different than the one here?

**Mr Baldwin:** Not necessarily, no. I think what we are talking about is the definition of access. But within the context of the bill, certainly to create that kind of support within the community would be within the mandate of the advocate.

**Mr Poirier:** Do you think the current definition of advocate as proposed in Bill 74 would be enough for you to take that definition and use these advocates as proposed and to minimize the number of guardianship statuses across the province? Do I hear you correctly?

**Mr Baldwin:** Yes.

**Ms Hastings:** So long as the provision with respect to non-instructed advocacy is addressed.

**Mr Poirier:** Do you want to elaborate on that?

**Ms Hastings:** As we understand it today, it may be that a person who cannot clearly say, "Yes, I would like an advocate," may not receive an advocate. We believe that a large proportion of the clients whom we represent will therefore not receive the advocate and instead may be appointed a guardian, which is exactly what we are trying to avoid. Guardianship should be a last resort.



**Mr Poirier:** What would you do with somebody with an advanced case of Alzheimer's?

**Mr Baldwin:** We are not here to speak on behalf of the needs of other groups.

**Mr Poirier:** Okay, an Alzheimer's case would not fit into your criteria of what you do, only people who can find a place in community living, and I understand that somebody with advanced Alzheimer's would not be able to do that.

**Mr Baldwin:** Certainly, persons with developmental handicaps also have Alzheimer's. But if you are asking if we can speak on behalf of organizations that represent those needs, no. What we are presenting are primarily the needs of the members of our association. They are our family members who have children with developmental handicaps.

**Mr Poirier:** You are coming from a very specific area.

**Mr Baldwin:** Yes.

**Mr Poirier:** What you are advocating—pardon the expression—is obviously for a very specific group, where it may not apply to other people with difficulty living in the community.

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**Mr Baldwin:** A difference would be perhaps that someone with Alzheimer's may have access to power of attorney. We are talking about people who at no point in their lives would be able to sit down and document what their expressed wishes or desires are. Yes, this group constitutes a separate set of needs that have to be included.

**Mr Poirier:** Thank you for helping me make the distinction.

**Mr Winninger:** I certainly appreciated your presentation, but I do have a little difficulty with your position on guardianship. Perhaps I could ask a question or two to help me clarify it.

You described guardianship as the last resort. Some people have described it as a necessary evil. At the bottom we have, say, advocacy, which may in fact be the least restrictive alternative. Perhaps at the upper end we have guardianship. If it is indeed the most intrusive form of intervention, is it not important that if we are going to have guardianship—and you do seem to acknowledge the need in some cases for guardianship—that there be a finding of incapacity, because otherwise guardianship could be foisted on people who are perfectly capable?

They may be needy individuals, they may be vulnerable individuals, they may be individuals who benefit a lot from the community support you advocate. And yet they may have capacity. My problem is, I do not see a finding of incapacity as having that stigma attached to it that you seem to. If someone is found to be deaf or someone is found to be disabled, there is no stigma attached to that. It is the way society may discriminate against that class.

However, the same must apply to mental or physical incapacity. It is not an opprobrious term in itself, but it is a means to an end. By making that finding of incapacity, are you not setting up, structuring the basis for the kind of intervention that may be required? For example, in the case

of someone who is institutionalized without any family network, how do you make decisions on behalf of that person? How are you accountable in the long run?

**Mr Baldwin:** On the one hand we fully acknowledge that there has to be protection of people's rights within the context of an assignment of a guardian. However, particular to persons with developmental handicaps there has been a struggle over the past 30 years to overcome the stigma that has been attached to that label. The stigma has had very powerful effects on people's lives in terms of denial of the privileges of community living.

From our viewpoint, to establish the need for support in making decisions primarily around personal care—that is what we are talking about—is support in some instances more than others, across individuals and across situations, to provide that as a support which we see as very valuable—we do not deny that support is needed—but not to base it on a clinical or legal application and finding of incapacity. When we look at that and we say, "What is the value added?" we recognize that one of the values is the protection of rights. But when we look at the downside of what that does, particularly from the family's and the individual's perspective, it creates once again a very stigmatizing label that we have experienced significantly in its impact on the community. It is telling people that individuals are incapable.

We have been struggling for 30 years to tell people that individuals are capable, are members, are participants. We acknowledge the struggle that you have legally in trying to reconcile these positions. What we are putting to you is, surely there must be some vehicle, some way in which the protection of rights can be included, as well as the protection against the stigma of a label.

**Mr Winninger:** I take it that the concept of partial incapacity does not affect that balance for you. Someone can be incapable for one purpose yet capable for another—

**Mr Baldwin:** Exactly.

**Mr Winninger:** —and by respecting that partial capacity you are achieving the least intrusive alternative? Is that not satisfactory?

**Mr Baldwin:** My understanding is that in both instances there is still the requirement for the proof of incapacity. That is what we are taking issue with. There must be another way of establishing and validating a person's need for support in decision-making. We are talking about someone who needs help in looking at situations and making decisions. From our perspective, to have that be a process of determining whether or not they are competent is not the route we want to see developed in something as comprehensive as this legislation.

**Mr Winninger:** If you find a better alternative, let me know.

**Mr Baldwin:** I would ask that you seek a better alternative, because what we are saying is that the impact on the lives of the people we represent truly would be significant.

**The Vice-Chair:** I would like to thank you for appearing before us today. I know you have taken time out of your busy schedule. Thank you very much.

## COUNCIL FOR LONDON SENIORS

**The Vice-Chair:** The next group we have presenting is the Council for London Seniors. Good afternoon; I would like to welcome you here. Before you start, if you could please give us your name for the record and then begin, please.

**Mrs Nickle:** My name is Norma Nickle. I feel very lonely up here as a group. Members of the committee, I would like to thank you for hearing today from a fledgling seniors' organization. I realize "fledgling" and "senior" are not usually two words you put together.

I would first like to introduce our council to you. The Council for London Seniors was established in 1989 under the joint auspices of the Ministry of Community and Social Services, the city of London, the Thames Valley District Health Council and the United Way of Greater London. Since the first meeting of interested persons in May 1989, the council has been developing with a view towards providing a forum which would bring together individuals and groups in the city who are concerned with all matters relating to seniors. I hesitate to tell you, but we consider a senior to be anyone over the age of 55.

Our current active membership includes seniors, providers of service to seniors, and community members who have an interest in the wellbeing of seniors. The current draft of the council's bylaws states that its mission is to enhance the quality of life of seniors in London in order that all shall have the opportunity to achieve their full potential. The council will provide seniors with a sense of identity and opportunities for participation in programs that focus on advocacy, communication, coordination, education and planning.

Eleven senior members of the council and two service providers, along with a local lawyer, studied Bills 74, 108 and 109, along with Mr Sterling's Bills 7 and 8. We looked at the bills from a senior perspective and we hope our comments will be received in that context.

First, I would like to state that we found the legislation very difficult to read, study and understand. Our seniors come from many cultural and educational backgrounds: law, medicine, and education. We studied and struggled with these convoluted bills to the point that we concluded that their intent was not very clear to us. The three bills are so intertwined and impact on seniors in so many ways that it would seem to this senior group that we need a bill written just for seniors. A clearer example would be the Older Americans Act, easily understood, outlining specific responsibilities. We doubt that broad-brush legislation is going to serve seniors effectively.

Seniors have spent a lifetime making their own decisions and they want to know that when they become frail they will have some ability to control their final years. We know that by the year 2000 Ontario will have a high number of seniors. We are living healthier lifestyles and we are going to be around longer. We will become frail at a later age and will require more health care and decision-making. The thrust of the new long-term care legislation is to keep us in the community longer, and many of us will be at risk. The care givers, if they are seniors, will have to make a lot of decisions never presented to them before.

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We are told that 20% of seniors over the age of 80 will suffer some form of dementia. That is a statistic that would make all seniors fear that they are going to lose control of their own destiny.

Bill 109: This is the bill that we are most anxious to address. Why not a living will? We do not want to become a burden to our families and we need to know that while we are still healthy and able to understand all the ramifications of our decision we can give our family, friend or doctor a validated paper that expresses our desires. We would like to be reassured that we have made our own decisions and that these decisions are effective now, and not wait until we are no longer capable.

We liked the health-care directive produced by the Hamilton group called Let Me Decide. An 84-year-old member of our committee indicated that she does not want CPR if her heart fails. She listened to the statistics of the success rate of CPR on frail seniors—less than 1% benefit. She would like the ability to say no.

We do not want our families arguing about what is in mother's best interests. We want to make that decision while we can. It is important to us that a validated, in-force document is in place.

We have experienced long delays in assessment and assistance in the past. Bureaucracy has been cumbersome and will continue to exist, as is evident in the content of these bills. Most frail seniors do not have enough time to wait for the wheels to move. A consent and capacity board has got to be just another hurdle. In many cases the senior does not have time for the process to work. A great concern is the ability for this board to override the seniors' instructions.

The education of health-care providers on all levels is critical to any new law or, even as stated in this act, just the codification of the present laws. Historically the professional has had control in the area of health care. Will this Act respecting Consent to Treatment and the seniors' wishes be respected? We again are somewhat cynical about professionals changing. Many problems with the Mental Health Act are directed to professional non-compliance.

A living-will type of directive would allow all seniors to specify what life-sustaining treatments a senior desires.

Seniors need their own legislation. Easy to understand, not intimidating, respecting the dignity of their long life of decision-making, giving them control over their destiny. As stated in our brief, seniors fear dying poorly versus dying actively. Let us decide and know what we decided.

Bill 108: Seniors living longer and becoming confused and feeling less secure—both conditions a definite with the aging process—will need help managing property and assistance with their personal care. Seniors with a family network and holding an estate or property need to know that their wishes will be followed, and that their guardian has all the necessary legislative powers to carry out the senior's wishes.

The ability to draw up a validated personal-care document and a document for management of property while still able to designate that power of attorney with an effective date and stating the circumstances for exercising the rights of the document ahead of any incapacity or emergency



would reassure the senior that his or her wishes will be followed. Why wait to validate?

We question who will have the authority to validate the documents to make them legal. Will they require legal advice, and if so, what will be the cost to seniors and their estates? This will have to be outlined very clearly and simply, or seniors will back away from helping themselves.

Again, education of public and professional is necessary to make any legislation work. The information has to filter down through the system to everyone.

The seniors in our group had some serious concerns about the "classes of persons" who will be the assessors. Will they be trained and in place for the enactment of this legislation? Will seniors be asked to help in this education process? A senior understands the fears and concerns of a senior experiencing third-party interference.

In Bill 74 this new bureaucracy leaped out of the legislation at our study group. We have to assume there will be some new boards and commissions and staff, but we would like to see it minimized. Surely we have agencies in place that can handle some of this work.

The Advocacy Commission, with the membership makeup outlined in the act, will not represent seniors appropriately. We all agree that seniors will be the major users of the advocacy service and should therefore be the majority of members on the commission. The method of nominating the commission members leaves out a host of organizations representing seniors and consumers. To give the commission credibility, this has to be reviewed.

The role of the advocate is not well defined and could involve any kind of activity. The responsibilities are not clear; to whom are they accountable? What are the qualifications of advocates, and will they be trained to understand seniors? All service providers have required qualifications and they are liable for their actions while in the commission of their duties. Will advocates be liable? Seniors are vulnerable. Are these advocates decision-makers or are they advisers? They must not be seen as meddling. The senior will be threatened by interference.

We realize that many definitions are defined following legislation, but in this case we feel that major definitions should be defined in the body of the legislation and the elected members made accountable to their constituents.

Finally, our group of seniors feels that there is a great emphasis on the rights of the individual without an equal emphasis on the individual's obligation to care for and be responsible for himself/herself. All three new pieces of legislation do not make it any easier for most seniors to make decisions and care for themselves. If you allow us to help ourselves while we are capable and to help our families, friends, physicians to assist us when we are no longer capable, then we will not be a burden to anyone, and not being a burden is important to us. Let us decide. There is a need and a wish among younger seniors to be able to plan ahead and make it easier for themselves and their families.

Public, senior and professional education about these bills is critical. A change of attitude by the senior, the professional and the community will have to take place to make this legislation work.

Will this legislation prevail over federal legislation? Will this legislation work with similar legislation in other parts of Canada? A senior will often move to be closer to his or her family. Will they have to start all over to make decisions about their care and property if they move? Will the implementation of this legislation be properly funded?

Now for some concerns and recommendations.

**Senior-specific legislation:** We are concerned that the views of seniors must be heard during the deliberations of this government and before the enactment of this legislation, so that laws will best serve the growing senior population. We feel very strongly that separate legislation should be enacted to address the senior population directly.

Seniors have very little in common with the young developmentally handicapped. Seniors have established family networks and estates and have spent a lifetime making their own decisions. One senior bill could address consent to treatment, power of attorney for personal care, power of attorney for property, and advocacy for those over the age of 65. We need laws to allow the right of determination.

#### 1450

We support the concept that a person should have the right in law to make provision for medical decisions in the event that he or she should become incapacitated. These living wills or durable power of attorney for health documents should have an effective date determined when they are signed. Provision should be made for updating periodically.

**Educate the service provider/health care professional:** The entire system, including seniors, will have to be educated and informed so that the seniors are able to deal with their own decisions in a dignified and practical manner. The majority of seniors wish to participate, and are capable of participating, in a meaningful and constructive lifestyle. They can offer a great deal to their families and to their community families. A change of attitude by the professional and the community will have to take place. We need to see extensive education as part of any legislation dealing with seniors.

**Clear and precise legislation:** Bills 74, 108 and 109 and their intent are not at all clear and will not encourage seniors or family members to take responsibility for themselves or for their loved ones. The system would certainly be enhanced if the majority of the 55-and-over population enacted a living will and a power of attorney for property and personal care so that in the year 2000 this large part of our population would be accepting responsibility for itself.

**Advocacy Bill 74:** It is our strong wish that Bill 74 be revisited. The legislation must clearly define who the advocates are, what their qualifications are, to whom the advocates are accountable and when a senior will benefit from the service of an advocate.

**The Vice-Chair:** Thank you very much for that most thoughtful presentation.

**Mr Chiarelli:** I want to thank you very much as well for your thoughtful presentation. I think you make a very good case for your group.

I am concerned about specifics and specific implementation of the advocacy legislation. I think the legislation is

very high and very good in good intentions and very low in specifics. When it comes down to specific situations, if this legislation were to be passed I think there would be a lot of gaps and a lot of uncertainties, and you pointed out some of those.

I am going to ask you one question that I asked someone previously as well. When this legislation was introduced, in briefing notes and in promoting this legislation, the government, and the minister in particular, Ms Ziemba, used the words: "In its simplest form, advocacy provides a voice for those who may have difficulty in expressing themselves because of a disability, whatever its nature, and who do not have the support of family and friends to assist them in doing so."

It makes it sound like if there is family support there, then the advocacy legislation will tie in, but in fact there is nothing to that effect in the legislation itself. The legislation talks about the advocates' and the advocacy's responsibilities, duties etc, and does not refer to any priority or preference given to family support as opposed to that of advocates.

My question to you is, in your reading of the legislation and your understanding of what happens to someone called the consumer, can you see circumstances arising where the advice and the course of action that an advocate would want to take would be in direct conflict with what a family member might want to do?

**Mrs Nickle:** I think that was one of the things we were concerned about when we studied the bill. A lot of seniors do not have family nearby, and we were looking at an advocate being called in an emergency situation. That was why we strongly recommend that while seniors were able to make some decisions for themselves, they would have some kind of document with themselves, with their family, their friend, their physician, whomever, so there would never be an opportunity to have to have an advocate make a decision that would not be the senior's choice.

**Mr Chiarelli:** But let's assume you have a situation where there is a senior in some sort of vulnerable position. You have a close family member recommending one course of action and you have an advocate recommending another course of action, and they are totally at cross-purposes in what they want to do. Can you see that situation arising?

**Mrs Nickle:** Certainly.

**Mr Chiarelli:** Can you see anything in the legislation which assists that or addresses that confrontation that may occur, granted, in a minority of situations, but certainly situations will arise like that?

**Mrs Nickle:** We see nothing in the legislation that would give a definite line of direction for an advocate, a senior or a family member to take. There does not seem to be any recourse. We were very concerned about the fact that if it had to go beyond that, there is not time in a senior's life to have to go to another board of appeal.

**Mr Chiarelli:** Do you think the government would be well-advised to withdraw this legislation, which is live legislation—it has been through second reading and it is in committee stage now—and reintroduce it as a draft bill

with a lot more time and a lot more consideration by groups such as yourselves?

**Mrs Nickle:** Yes, we would definitely feel that way. We feel the bill as it stands needs to be revisited, definitely.

**The Vice-Chair:** We seem to have a clarification from the parliamentary assistant involved with the ministry.

**Mr Malkowski:** I would just like to clarify that the advocate does not make decisions. I want to make that very clear. You need to read through Bill 74 very carefully under clause 7(1)(h). An important point there to clarify is that we do not make the decision. The advocate does not make the decision without the family. They are there to get the support of the person and they would not be interfering with the person's wish, so I think we need to clarify that.

**The Vice-Chair:** Thank you very much for that clarification.

**Mr Sterling:** I think anybody who has had practical experience in trying to take instructions from elderly people, from vulnerable people, knows that while he might not think he is making a decision for the vulnerable people, many times the advocate does in fact make the decisions, regardless of what legislation might say or whatever. That is a very deep concern, I am sure, of your group.

I was touched by your brief because it represents in a lot of ways my concerns over the legislation. One of the reasons why I wanted the committee to keep Bills 7 and 8 in front of the committee was that if there was a strong enough feeling by the committee that it should sever out those parts of the legislation dealing specifically with durable powers of attorney and living wills, that option still would be there for us. I take it from your brief you would prefer to see living wills and durable powers of attorney severed away from Bills 108, 109 and 74. Is that correct?

**Mrs Nickle:** Absolutely. We did a literature search through 44 states, and then this bill that is specifically for seniors in the United States. It is not perfect but, yes, there are some things that are very definitely seniors' concerns and they cannot be part of this; they need to be separate.

**Mr Sterling:** I think you correctly identified the problem of including them in this legislation. It was identified by another witness before the committee yesterday, actually the Canadian Bar Association, saying that Bills 108 and 109 try to address too many situations within the same pieces of legislation in trying to deal with people who are entering psychiatric institutions and people who are trying to deal with a fairly simple family situation.

Yesterday, I also asked the ministries whether or not I as an individual or a citizen of Ontario could exclude an advocate from the process. You mentioned very strongly your desire and the desire of your group to maintain control of your lives until you die. I consider the advocate an intrusion into my life and into the lives of the people of Ontario. Would your group think you should be able to exclude an advocate from entering into the decision as to what should be done for you or what should not be done for you in the future?



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**Mrs Nickle:** Yes, we have said a couple of times that we thought an advocate would be meddlesome, would be interfering and would be suspect by a senior. We feel very strongly that a senior, when he or she becomes frail, will be confused easily, and though an advocate is there to advise and not make decisions, that would be a very fine point.

**The Vice-Chair:** We have a clarification again from the PA.

**Mr Malkowski:** Again, I just want to make it clear that the advocates will not be interfering with the vulnerable person's decisions. They are not going to be interfering in the decision-making process. I want to clarify that. If the person does not want the advocate involved, then the advocate would respect his wishes.

**The Vice-Chair:** That is just a point of clarification. It is not an interjection. Mr Winninger, please.

**Mr Winninger:** I too would like to thank you personally for journeying from London today and sharing your views with us.

**Mr Chiarelli:** As a matter of fact, it is a point of clarification, but it is also an opinion, and I think it is important that if the PA can express opinions, then other members of the committee should be able to respond to his opinions.

**Mr Winninger:** I thought I had the floor, Mr Chiarelli.

**The Vice-Chair:** Excuse me. Mr Winninger has the floor.

**Mr Winninger:** I know your organization is a relatively young one, but I know you have brought together a number of seasoned professionals who have had long years of community service. I was quite pleased to note from your annual report that my former family doctor and the legal aid area director both make contributions in the work of your advocacy organization.

You asked, why not a living will? I know you have probably read through these acts carefully, but I would ask you to revisit section 13 and section 28 of Bill 109, because section 13 sets out that the wishes expressed in a power of attorney for personal care actually override the appointment of a guardian under the Substitute Decisions Act. So if a person decides he or she wants to authorize a particular form of treatment or authorize a withdrawal of a particular kind of treatment, the instructions are quite clear and the legislation is quite clear that this cannot be overridden.

There may be cases where the instructions are not so clear or there may be cases where the person later on has decided that technology has improved to such an extent that he can make a valid expression of his will that if the technology can save his life, the technology might be used on him. But I would suggest to you that there are very limited circumstances where, under section 28, a board can override the avowed wishes of the person who either seeks a treatment or authorizes the withdrawal of treatment through his substitute.

**Mrs Nickle:** I guess our concern was that our reading of the consent to treatment said that it did not become

validated, that it was not acted upon, until it was needed. What we are saying is that I would like to be able to go to my lawyer and put all of this down on paper and have it validated and certainly updated as things change, just as I would my will.

**Mr Winninger:** There is nothing to stop your validating it, but under section 13 it does not even have to be validated in order to be followed in a treatment facility. Section 13 is very clear: Even if the attorney dies or becomes incapable or resigns, the earlier wish has to be complied with; the advance directive must be obeyed.

**Mrs Nickle:** We would be happy to read it again. As I said in the beginning, we had difficulty; we struggled with it.

**Mr Winninger:** Sections 13 and 28 are key to that understanding.

**Mrs Nickle:** Okay.

**The Vice-Chair:** Thank you very much for your fine presentation. I am glad you took the time out to come here today.

#### NORTH YORK PUBLIC HEALTH DEPARTMENT

**The Chair:** The next group up is the North York Public Health Department. Good afternoon. Could you please identify yourself for the record and then proceed.

**Dr McCausland:** Yes, I am Dr Joan McCausland. I am the deputy medical officer of health in the city of North York, and my colleague, Ms Diane Johnston, is assistant director of public health nursing. We appreciate the opportunity to come and address the committee to speak to the brief we have already submitted.

First of all, we would like to say that public health in general supports the intent of this legislation. It is important legislation and we wish you well in your endeavours.

We would, however, like to call attention to some of our concerns, and the first of those is the definition of "treatment" in Bill 109, which "means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose..." It is a very broad definition, and we feel it covers the kinds of screening programs that are required by Ontario regulation 274/91 under the Health Protection and Promotion Act, which requires public health departments to carry out vision and hearing screening in children entering school in Ontario for the first time. These are non-invasive tests. The vision test is very straightforward. It involves reading letters on a card. The audio test is also non-invasive, involving wearing headphones. The dental screening program is also a requirement of the legislation and involves asking a child to open the mouth for a visual inspection.

At the present time public health departments are carrying out these screening programs at low cost. We feel that if screening programs are included in "treatment," then we will have to make a fundamental change in our procedures in obtaining written consents from parents. This is a very time-consuming process. Many letters go home to parents from the schools and many are not returned as consents. What is superficially a simple, acceptable, low-cost program to identify children with disabilities will become less efficient, because we feel the children whose parents are

less likely to return the consents signed are the children who are probably in greatest need of the screening test. At the present time we are advising parents that the tests are to be carried out and that if they do not wish their child to participate, that is fine; there is no penalty and no discrimination for non-participation.

Our second concern is regarding the determination of capacity to give consents. Public health departments run birth control clinics where there is some treatment of sexually transmitted diseases. Also, most of the people who come to those clinics are indeed over the age of 16, but there is a small number of them who are 14- and 15-year-olds. These young people, male and female, are already sexually active, in the vast majority of cases, before they ever show up at the clinic. Under common law they can give consent for treatment and we think it is important that this be allowed to continue. The common law serves us well at the present time.

However, we do see a need for criteria to determine capacity to give consent. With the new legislation there will be 22 regulated health professions and it is really important that we do have criteria as to capacity to give consent. At the present time it appears that health care workers who are not regulated can do almost anything, whereas the regulated people are really tied there.

Failure of these 14- and 15-year-olds to obtain proper treatment could have serious health effects for them in the long run, such as sterility or serious medical problems that can result from failure of a sexually transmitted disease to be treated, and again, failure to obtain adequate counselling about pregnancy could lead to illegal abortions.

I would add that when these young people do come to one of our clinics, it is part of our procedures to counsel them that they should be talking to their parents, that they are not to bypass this in any way at all, and if they need assistance in talking to their parents, then our staff are certainly very willing to provide that assistance.

Those are our concerns and we would be pleased to answer any questions you have.

**The Chair:** Thank you very much.

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**Mr Poirier:** I looked at your recommendations as you have worded them pertaining to the age of 14 and 15. It becomes a very interesting topic, because you are obviously not the first group and I am sure you are not the last group to talk about age in all this thing. When you read articles that some people sometimes as young as 12 are out on the street and actively engaged, what is with 14 and 15—maybe the vast majority of your clients may be 14 and 15, or below.

**Dr McCausland:** No.

**Mr Poirier:** The vast majority of those who are 16 or 14 and 15; how is that? I think that is more like it, yes. Other medical officers who have come forward have asked that there be removal of reference to age and let the medical practitioner decide if he or she feels that the person in front of him or her, no matter what age, can make the decision to give consent. Would you feel even more comfortable with that or what?

**Dr McCausland:** I think that should certainly be considered. We have very few clients who are 13 and under, and they are usually cases where children's aid has to be involved.

**Mr Poirier:** No doubt, but even if there are only a couple of them, the thought that there are some children of that age who could not seek or need medical attention, and they may hesitate or the medical practitioner may hesitate because that person cannot—because of some wording in the law somewhere, it can handicap the process of giving health services to someone in need because of age restriction. Would you be even more comfortable if there was complete removal of reference to age?

**Dr Causland:** Yes.

**Mr Poirier:** Okay. I am trying to see a consensus there to give our good friend the parliamentary assistant to go back with some recommendations to the minister that he has heard this, even though the opposition has added this, because we are trying to make a consensus as to the different recommendations pertaining to age.

**Ms Johnston:** I think that, as was mentioned, the 14- and 15-year-olds are the ones we would see most. However, as you have suggested, there certainly are some 13-year-olds. In terms of the consensus you are referring to, the preference would be for no age restriction and look at the common law and the age of consent.

**Mr Poirier:** In 24 words or less, how would you say young people feel about coming up by themselves, without parental knowledge, to get medical aid? Would you feel the majority, or part of a minority of the kids that age, feel comfortable as they do it? What percentage of the kids you think need medical attention do go up freely?

**Dr McCausland:** The young people who come to public health clinics feel much more comfortable coming to a clinic rather than going to the family doctor or anyone their parent knows.

**Mr Poirier:** And what percentage of the young people who you think need medical attention would show up? Is there still shyness involved, hesitation?

**Dr McCausland:** Yes.

**Mr Poirier:** Very much so still today?

**Dr McCausland:** Yes.

**Mr Poirier:** Okay. That is why I would like also to see the complete removal of age. If we cannot trust the medical officer to decide whether the person in front of him or her is able to give consent, who the hell can we trust, right?

**Dr McCausland:** Right.

**Mr Poirier:** Good, thank you. Sorry for putting words in your mouth, but I thought that.

**Mr Sterling:** Thank you very much for coming, because the issue you raised was brought forward this morning as well. What I would like to ask the parliamentary assistant is, if you are under 16 under Bill 109, it is assumed that they are not competent and then that presumption can be rebutted. If it is found that they are not competent, then an advocate is brought in. That is correct, is it not?



**Mr Wessenger:** Yes, it is correct that if a child is found not to be competent, then an advocate, under the way the bill is presently worded, would be brought in.

**Mr Sterling:** What happens when you treat very young children? Is an advocate involved in all those cases?

**Mr Wessenger:** Perhaps I would refer that to our counsel. I think perhaps it is an area that needs some clarification in the future with respect to the bill, the whole question of the age aspect. I think I will ask counsel just to comment on that.

**Ms Bentivegna:** Generally, the way it is drafted now, if a young person under 16 is presumed mentally incapable, if he or she expresses a wish to make the treatment decision, then the practitioner has to determine whether he or she is incapable to make that treatment decision. If they are found incapable, then there is an advocate and they have a right to go to the review board.

**Mr Sterling:** There was a question in the Legislature of the Minister of Citizenship by a New Democratic Party member about the immunization thing where a child, say, of seven or eight, said, "I don't want to take the needle." You would tell me then that, notwithstanding the parents saying, "He or she is to have it," an advocate would be called in.

**Ms Bentivegna:** There is right now in the language the ambiguity that that could be taken as an expression of wanting to make the treatment decision. All they are basically expressing is a fear, but people have said that could be taken that far, that language of expressing a wish to make the treatment decision. So that is a possible interpretation, that then that child would be found incapable of making the immunization decision and then you would need the advocate, but the intent is that you would look to someone who was capable of making such a decision, demonstrating that wish that, "I want to make the decision to be immunized or not." The question is, is that child, at his young age, really saying that or is he just expressing a fear? The committee may decide that it wants to clarify that language or put a bottom age as to when you can express a wish to make a treatment decision.

**Mr Sterling:** I think you are trying to confuse the situation.

**Mr Wessenger:** With respect, I do not think she is trying to confuse; it is perhaps a difficult issue here.

**Mr Sterling:** I think it is incumbent on you to clarify the situation. Obviously your minister did not understand the question or gave the wrong answer in the Legislature, because she denied that this was the case.

**Mr Wessenger:** No, to be fair, if you look at a young child, I think the question is that you normally interpret a young child refusing to take a needle as not at all expressing desire to make a decision. You would say that child would be incapable of expressing even the capability of making a decision on the treatment or not. A very young child would not have that capacity, and therefore the health practitioner would ignore that expression of the four-year-old refusing to take the needle.

**Mr Sterling:** I cannot think of any more direct indication of not consenting than saying no. I do not care

whether the child is four or six or 12; if you want to extend it to 12, or whatever, the doctor says, "I'm going to give you a needle," and you were recognizing the person as a vulnerable person, and he says no, that is a decision that the individual, if you are respecting that individual when he is four or he is 40, is saying no. In my view, I do not know how you can argue that.

**Mr Wessenger:** I think that at this stage we are not dealing with the actual language of the act.

**Mr Sterling:** Then put some language in front of us; please.

**Mr Wessenger:** This is what we are listening for, to get input with respect to this matter. I think I have already raised with the previous question the question of a minimum age.

**Mr Chiarelli:** The damn legislation has been through second reading. What in hell are you talking about?

**Mr Sterling:** I think there is a great problem for members of the committee and members of the public to deal with this act with the genuine kind of input and debate that is needed. If in fact you recognize there is a problem, and I think you have, then I think you should forward an alternative suggestion so people can then say: "That one is ridiculous. We'll go to the next suggestion and let's talk about it."

**The Chair:** In fairness to our presenters, I think we could discuss this—

**Mr Sterling:** I am sorry, but you helped raise the issue.

**Mr Chiarelli:** I think it is very relevant to this committee. What I would like—

**The Chair:** Mr Chiarelli has a question along this same line before we proceed over to Mr Wessenger.

**Mr Chiarelli:** I have another question for legal counsel, if I may. I do not think we can look at this legislation in a vacuum. What I want to ask you is, if I were a health practitioner and I am in a clinic or some sort of medical setting and I have a 14-year-old in front of me and that 14-year-old says, "I want treatment X," should I call the parent? Should I call an advocate? Should I call both? What should I do?

**Ms Bentivegna:** The first thing to do is that the practitioner ascertains if the person before him is capable with respect to making that treatment decision. If they are capable—

**Mr Chiarelli:** But she is not sure.

**Ms Bentivegna:** Right. But they would—

**Mr Chiarelli:** If there was uncertainty there.

**Ms Bentivegna:** Right, but they make the final decision. They speak to the young person, they explain—he or she, the practitioner, makes that decision, "I'm dealing with a capable young person or I'm dealing with an incapable young person."

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**Mr Chiarelli:** The other option is, "I can't decide; I don't know." What happens in that case?

**Ms Bentivegna:** They would have to make a decision either way. If they do not know, I guess they would err on the side that they are dealing with an incapable person,

because they cannot take a consent from a person who is incapable.

**Mr Chiarelli:** And then what happens?

**Ms Bentivegna:** If they are dealing with an incapable person, then they should call in the advocate and notify that young person of his or her rights.

**Mr Chiarelli:** The legal obligation is to call an advocate?

**Ms Bentivegna:** Yes.

**Mr Chiarelli:** Is there a legal obligation to call the parent?

**Ms Bentivegna:** No.

**Mr Wessenger:** Just with respect to the screening aspect, when you send out the information to parents with respect to the procedures, do you send out full and complete information as to what procedures their children will be subject to in the screening, what test they will be subject to?

**Dr McCausland:** Yes. We send a description of the test. There is a list of possible danger signs for parents to look for, signs that a child may have some vision or hearing problems, and a brief description of the test, which is a non-invasive test.

**Mr Wessenger:** Right. What I am referring to, of course, is subsection 5(2) of the Consent to Treatment Act, which states:

"A consent is informed if the person, before giving it, received all the information about the treatment, alternative courses of action and the material effects, risks and side effects in each case that a reasonable person in the same circumstances would require in order to make a decision."

Would you say the information you send out would meet that category?

**Dr McCausland:** More or less.

**Mr Wessenger:** I would hope more. We may need some clarification of the legislation in this regard, but it is clear in the legislation that consent to treatment may be implied. I would suggest in this particular instance that if adequate information is sent out to the parents and they do not object, then you could imply that consent has been given by the parent with respect to the child and then proceed with the screening. I am just suggesting that it would not affect your screening tests. As long as you follow your present procedure, you could still proceed with your screening tests.

**Dr McCausland:** Yes, but if screening is defined as treatment, then getting a signed consent back becomes the issue.

**Mr Wessenger:** No, the point I am trying to make is that you do not require a signed consent. Consent may be implied under the legislation. Consent does not have to be written consent. It may be oral consent or it may be implied consent.

**Dr McCausland:** If that is the case, then that would be fine.

**Mr Wessenger:** Yes, it is the case that it may be implied. I appreciate your raising the point, but I think it should be

looked at by our counsel to make certain that that type of situation is covered.

**Dr McCausland:** Yes.

**Mr Wessenger:** Thank you. I might ask you another question with respect to the age aspect. I notice you are suggesting rebutting the presumption in a 14- or 15-year-old. I just like your comment first of all with respect to going back to the common-law position and not having a presumption, or alternatively having a lower age. I just wonder if you have any comments on either of those.

**Dr McCausland:** The ages of 14 and 15 were chosen simply because that is the age of the people who come to the clinics we run. We were really looking at the implications for our own department only in regard to this legislation.

**Mr Wessenger:** You were not looking towards the broader context?

**Dr McCausland:** No, we were not.

**Ms Johnston:** But the answer in terms of broader is that yes, it would be preferable to have no defined age because we certainly see younger clients, but they are in the minority by far. It is the 14- and 15-year-olds we would see primarily in our clinic setting. However, from experience I know that the younger ones certainly come.

I have a question in terms of prescribed criteria. That was one of the recommendations we had made here and I am confused now, in the discussion about criteria, as to whether they in fact do exist.

**Mr Wessenger:** I think I would probably have to ask counsel to indicate the whole question of what stage of development we are at, because I assume that would be dealt with under regulations.

**Ms Bentivegna:** There is a provision in the act to allow for criterion standards and procedures for health practitioners to follow in assessing capacity. Right now there is very preliminary work being done.

**Mr Chiarelli:** I just have one comment on the legal opinion. If I understand it correctly, and I think I do, if there is an uncertainty on the part of the health practitioners they would have to resolve in favour of a decision that the person is incapable, and then there is an obligation to involve an advocate but there is no obligation to involve a parent.

As the parent of a 14-year-old, if I found out after the fact that my child was at a medical practitioner's or a clinic and was deemed to be incapable or perhaps incapable and the obligation on the part of that individual was to get an advocate who is a stranger involved—with no obligation to get the parent involved, I think it is an atrocious piece of legislation. I think it is a gap that indicates that the legislation is ill-thought-out. It goes totally against the fundamental values we have in our society and I think it should be rectified. But when we see people coming in here with brief after brief, there are such a number of gaps that I think the government really has to seriously consider what it is going to do with this legislation.

**The Chair:** Thank you, Mr Chiarelli. Ms Johnston and Dr McCausland, I thank you on behalf of the committee for taking the time out and presenting your brief today.



**Mr Sterling:** On the consent issue of the counsel, just so I can understand it better, with regard to a child who is incapable and a physician who wants to undertake some kind of treatment, who makes the decision for treatment?

**Ms Bentivegna:** Let's say the child does not want to go and challenge the finding and says: "Fine, I'm incompetent. I still would like the service." Then the parent has to be called in, and it is explained to the child that the parent is going to be making the decision on his or her behalf, and if it is not a parent, whoever has the legal authority to make treatment decisions for him or her. Let's say it was a child under the children's aid society and the CAS had been given that.

**Mr Sterling:** But the parent then is given the power over making the decision for the incompetent?

**Ms Bentivegna:** Yes.

**Mr Sterling:** And the advocate does not come in?

**Ms Bentivegna:** No. The advocate only comes in to give that young person the information that he or she has been found incapable, that the parents will be making the decision and that the young person can challenge the decision before the review board. If he chooses to go the route of challenging, then treatment is delayed unless it is an emergency.

**Mr Sterling:** Just a minute; go back here. So if the parents decide there is treatment to be made for their own child, the advocate is not involved at all? Are they even notified that this is taking place?

**Ms Bentivegna:** No, if the child in no way expresses any wish to make the treatment decision—let's say both parent and child go and they discuss with the practitioner and it is decided what is needed and the child does not express any wish to make any kind of decision—then—

**Mr Sterling:** There is no commitment.

**Ms Bentivegna:** Exactly, then it is made on the substitute decision. That is why it is worded that in order to trigger a capacity to determination of that child, he or she has to express some wish to make the decision. Otherwise, in most cases, if the child does not say in some way, "Look, it's my decision," then it is the parent's decision.

**The Chair:** Thank you for that clarification.

#### VICTORIAN ORDER OF NURSES

**The Chair:** I would like to now call forward the next presenters from the Victorian Order of Nurses. Good afternoon. I understand you will be submitting a brief at a later time.

**Ms Murray:** Yes, we will, Mr Chairman.

**The Chair:** All right. For now, would you please identify yourself for the record and then proceed?

**Ms Murray:** Thank you, Mr Chairman. My name is Gail Murray. I am provincial executive director for VON. We welcome this opportunity to address the committee on the advocacy, substitute decision and consent to medical treatment acts. With me today are Ms Johanne Mousseau, director of clinical practice for VON Canada, and Ms Margaret Aerola, executive director of our Simcoe branch. I thought it might be helpful during the question period for

you to be able to address some of your questions not just to me from the provincial perspective but to some of the people who are working directly in the field. Johanne does actual hands-on nursing. It is part of her clinical practice about half a day a week, and Marg in her role as executive director is very close to the community and the actual running of our VON branches.

First of all I would like to give you a bit of background as to why VON chose to make a presentation in terms of the legislation. We serve 90% of Ontario through our 33 branches. We do more than three million visits a year to persons who receive services under the home care program in Ontario. That means we have many thousands of clients or patients whom we see every day throughout this province. We also administer four home care programs on behalf of the government of Ontario.

1530

In particular, our clients are very much that group you are attempting to address in terms of the legislation, the vulnerable adults, the frail elderly and the disabled, whether that be physically or mentally impaired. In addition, in particular with regard to the substitute decision-making, many of our clients, because they suffer perhaps from chronic illness or are receiving palliative care, are very concerned with the concept of the right to indicate their wishes with regard to treatment in the future.

First of all I would like to say very strongly that we do support the intent of the legislation. We believe there is a serious need to protect vulnerable adults from abuse and exploitation. Second, we promote the issue of people's ability to express their will with regard to health care treatment. I draw to your attention that this is very close to our hearts since the majority of the people who work for VON are nurses. Advocacy for clients has always been a cornerstone of nursing practice in terms of the teaching of nurses. They are taught to try to ensure that first of all they are meeting clients' needs, and they do that through involving clients in understanding their health status, teaching about health. In fact, we go to formalize that to the point of actually having clients sign their care plans to indicate their participation and involvement in the nursing treatments we give. I would also note for your information that under the Standards of Nursing Practice for Registered Nurses and Registered Nurses' Assistants in Ontario it is a requirement for nurses to also advocate for system changes. Much of the role of the professional nurse in society addresses some of the issues you are trying to cope with when you bring forward this legislation.

Our concern, while supporting the need for advocacy, is also the issue of whether the best system to come forward is a formalized system of advocacy or whether we need to look at options that will be effective but not necessarily overly intrusive in the relationship of the health professional and the client and the family, that work administratively, that are not going to protract or delay necessary care or treatment, and finally, that are not going to be overly costly to the system as we look at a time of scarce resources, as I know you are all very aware, when it comes to health and social services.

We are concerned that as we approach these issues, we really need to look at what the principle is. What are we trying to achieve in society as we come towards these issues? We are making the assumption that basically we want to promote and protect rights. But to do that in our society, to be effective in this pursuit, is regulation the best answer? Is it the only answer? Or if we are going to regulate, how do we regulate in such a way that we get the outcome we want, which is a better system for everybody including those who are vulnerable and require care? We think that in doing this, the committee should think to the larger issues: How is it that we are talking about advocacy? What has happened in our society that we think we have a need for vulnerable adults to be protected by law?

My preamble about the role of nursing is that we believe we must, within nursing, continue to encourage through education and through training the fact that we must be sensitive to the rights of vulnerable adults and not make assumptions, not be paternalistic in our approach to working with them. Second, we would also urge you to look at society overall in terms of what we can do to promote sensitivity to rights by the public in general. Good work has been done in the last while through mass media campaigns to sensitize the public. We would ask you not to think that legislation alone is the answer; we must look to the broader issues.

In terms specifically of the Advocacy Act, we are supporting the need for advocacy. We support the concept of the commission. We recommend, though, that it be broad-based. We note that in the minister's comments in announcing the legislation she spoke to ensuring that it has significant representation from the disabled or those persons who have experienced a disability in the past. We support that concept.

We would also urge you to consider representation for care givers. I am not sure if you have heard from the Alzheimer's society yet. If you have not, I am sure they expect to present a brief, their concern being that the care givers for many of the people with chronic degenerative diseases, whether they be physical- or mental-status diseases, also have issues about involvement in treatment and care, and that they also be recognized as partners and be represented on the commission. We also speak to the need in Ontario always for geographic representation. This is a big province, and the nature of the communities is very diverse. We would urge you to consider that as well.

With regard to your concept of the nominations, with the advisory committee to nominate, we are wondering if it is really necessary or if we are not in a way overbuilding the system. It may be, in terms of your review of this, that you consider it to be necessary. We are wondering whether, if you structure the representation at the commission level, that would not be effective in terms of ensuring that the people at the commission are representative of the people to be served, and using media as well as direct contact with formal and informal groups to get your membership.

In terms of the type of advocate, our preference, again on review of the legislation and our experience, would be to work towards more of the voluntary system of advocacy as opposed to building another—I hate to use the word—

**Interjection:** Go ahead.

**Ms Murray:** —layer of intervention in society. "Bureaucracy" is perhaps a word that could come to mind, but I do not think the intent is bureaucracy. But we like very much the model you are talking about as one possibility, that of an accredited volunteer force that would be involved in advocacy and that would receive training. We see this as pursuing our overall goals as a society of involving citizens in the ultimate wellbeing of our society in endorsing and supporting pluralism in Ontario.

In terms of this, we are also thinking about—again those first principles—what we are trying to achieve here as a society. Do we believe the norm in terms of interaction of clients or vulnerable adults and their families is one where they need protection from one another? Do we believe the norm is that individuals need protection from health professionals? Or do we believe the general norm is that the system works reasonably well but there are exceptions? We want a fallback. We want a method of ensuring that when there are those exceptions, there is protection for people. We think this leads you to more of a system of perhaps at least trying the volunteer concept as opposed to creating an intrusive, ongoing, regulating process that assumes that all interventions require the possibility of a third party—that is, the advocate and the commission.

1540

We do note—and we are not clear about this from reading the legislation—that there may be a need to enhance the possibility of third-party referral for advocacy. From reading the legislation, it appears as if it is the client himself or herself, or in your terminology the vulnerable adult, who indicates a wish for the advocacy—or the child who may in fact be deemed to be competent for the purposes of the act. Many of our nurses have brought forward that they do see vulnerable adults living in situations that they perceive are possible exploitation, and would it be possible for them to make referrals to an advocate to work to assist that person to achieve? I think in many cases this may be not only the issue of access to health and social services, but of access to more of the broader issues covered in the social charter, ie, the issue of housing and so forth.

We also note that once you do the Advocacy Act as you have indicated, it is the cornerstone of those three pieces of legislation. You must then take due consideration to structure the other two pieces of legislation, the Substitute Decisions Act and the Consent to Treatment Act, because they follow one from the other. If you decide to go the voluntary route with regard to the commission and the advocates, I think you will have to rethink how you have structured the role of the advocate in the Substitute Decisions Act and in the Consent to Treatment Act, because there is such a compelling role in those latter pieces of legislation that I think it almost impels you to move towards a paid advocate system. I will go into some examples later on and have specific comments on those particular pieces of proposed legislation.

Specifically in terms of the Substitute Decisions Act we support the concept that we need to recognize the right of people to make decisions for the future about what kind of health care they want. The question we are wondering



about is whether we want to formalize this by law or whether we want to use the common law.

In our own experience with long-term care, we have introduced, as have facilities, the concept of the "do not resuscitate" order with our clients who are palliative in nature. We have done that by working with the patient, the family and the health professionals to come up with a system that ensures people receive the intervention they want. We have done this without having the Substitute Decisions Act in place. We think we need to refine this in the sense of allowing people to go beyond just that kind of decision-making to indicate the level and degree of intervention they want for procedures less final than "do not resuscitate."

We would ask you to give some consideration to looking at common law as a serious alternative. I would draw your attention to some of the work by Faye Rozovski out of Halifax, who has given consideration to these questions and occasionally has acted as counsel for VON. She has put forward some of the liabilities as well as some of the positive things about legislating.

If we decide to go with the legislative system in terms of the living will, meaning that ultimately others have the right to go to court for you to ensure that it happens, then I would ask us to consider that people are going to need assistance with establishing the power of attorney for personal care, in that we are legalizing this question which in my previous example of current practice we do without legalizing it. So we need to give consideration to resources for people.

I would like to give you an example. We have had a lawyer from one of our branches for home care review the proposed substitute decision legislation, and this is how we think it is going to work for us. At this point in time, when we are dealing with someone for whom we think there is some potential that he have a power of attorney for personal care, first of all we are going to have to look at whether he is capable or incapable under your definition. We are then going to have to establish if there is a guardian order under the Substitute Decisions Act and, if there is, an attorney for personal care and whether it is validated. If not, we have to arrange for the advocate and notify the public guardian if it is a six-month issue. If not any of the above, we must find the person entitled to give consent on behalf, in the following order of priority: first, the guardian of the person appointed under the SDA or the power of attorney for personal care; second, the unvalidated attorney for personal care; third, the board-appointed representative; or fourth, the spouse or partner, or fifth, the child etc.

Normally we start with the spouse or the child, and I would draw this to your attention: What are we doing in terms of the relationship between patients and clients and health care professionals? At the moment we are not sure how many of our clients we would have to go through these other kinds of procedures with, but we do believe that people in Ontario want the living will. From our experience, we know that our clients want to determine how they are going to be treated in the future. But if we go with this kind of system, it means that many of our nurses are going to be spending a lot of time on those steps of establishing

who actually has authority to give permission to follow what we perceive to be the wishes of the client. So again, is there a way to accomplish what we want to accomplish without what we could call such an intrusive system?

I would also like to comment briefly, because I am using up all of my time, in terms of the Consent to Treatment Act. Again, consent to treatment is something we deal with every day, as do all health professionals. However, I would like you to know that of all those clients I spoke of, probably only 1% today would get a formal—ie, a form-signed—consent. We use primarily implied consent to treatment. After we have reviewed this legislation briefly—again, we have not had a chance to do an in-depth review of it—we are wondering if in fact we are not going to be going from 1% of formal consent to 100% of formal consent.

I draw your attention to section 4, which implies to us at this point in time that if we have a form for consent, that form should be used. In a number of cases we do take a written consent. It has to do with whether we believe the treatment is intrusive and whether we believe there is a significant risk for side-effects for the client. For example, in doing IV therapy in the community we do a written consent for that. If we are drawing blood for a client for an insurance company and there is a risk that they might show positive for the HIV virus, we advise them in a written form under all of the provisions you have in the legislation. However, do we want to now have our whole system move to where we would use that kind of consent as opposed to implied consent? We do support the concept. It is very important, as we move ahead in terms of wanting people to be able to be responsible for their own health, that when giving consent they are fully informed, that consent is a voluntary decision and that it is a consent to a particular treatment.

The other point we would like to raise here, one I am sure other people have raised before us and will after us, is about the definition of "treatment." It is very broad. Much of our work in the community with the long-term-care client involves what we call "activities of daily living." We ask if it would be your expectation that this is a treatment and therefore requires a consent when we assist with bathing or with nutrition or with ambulation. We would ask you to consider whether you might want to define "treatment" a bit more specifically, such that it does not refer to "or other health-related purpose," under which everything in terms of "activities of daily living" might well fall.

We also would like you to consider some provision as to who is the most appropriate health professional to do the consent. If we are doing valve surgery on your heart, I think probably your physician is more appropriate than your nurse. But we leave that to your discretion in terms of the legislation.

We are concerned about the limit of "emergency" within the particular legislation. We are concerned that the emergency is so stringently defined as to be life-threatening. What happens to the 75-year-old in pain who is cognitively impaired, an Alzheimer's victim, so he or she cannot give consent directly? How long do they wait until we get the advocate to see them in order to deal with the issue of pain, of setting their arm and so on? I think we want the ability to be

able to provide treatment a bit more effectively in terms of time, than having to have people wait in pain until we pull the advocate in. We may be misunderstanding your intent in the legislation, but we raise that as an issue.

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In summary, I would like to reiterate that we do support the need for the Advocacy Act, that we would support a commission that is broadly representative and that we support a volunteer advocate with an accreditation in a training program. We also support the fact that in your legislation you are proposing a non-legal system but one that would use moral suasion, would advocate with systems and so forth.

But we are concerned when we start to apply it to the Substitute Decisions Act, particularly with regard to the powers of personal care, the legalizing of that, rather than perhaps working on a different way to change the way people practise health care, such that people can indicate what they want done, but in a way that they do not have to have a lawyer, and they do not then have to have multiple levels of administrative intervention to ensure that their will is followed.

Finally, we support the need to work on the Consent to Treatment Act, that it needs to be in place. But we would ask you specifically to consider the definition of "treatment," and also to help us vis-à-vis our question: Does section 4 imply that you really want to move from an informal consent to a formal consent using the written form normally used by the agency?

Thank you, Mr Chairman. Again, on behalf of VON we appreciate the opportunity to present to you this afternoon in terms of some of the issues that have emerged in our initial review of the legislation. We look forward to working with the committee or with others within government, if we can, to assist in the refinement of these very important pieces of legislation.

**The Chair:** Thank you, Ms Murray. Before we go on to the questions, I think legal counsel wants to clarify something that was brought up.

**Ms Spinks:** Yes, the presenter was concerned as to where referrals might come from for advocacy services. I just wanted to advise you that there is nothing in the act which would preclude third-party referrals coming from someone such as yourself.

**Ms Murray:** Thank you.

**Mr Curling:** The concerns you expressed here were almost identical to what the doctors expressed, especially when you spoke about the emergency aspect of it. Do you see that the consent act here almost stops you right in the track of not performing anything at all as a nurse? We were debating the last time what diagnosis and determination is.

**Ms Murray:** Right. For the record, I want you to know we have not actually talked to anybody else. We have read the Alzheimer's brief and we have seen some work from the Ontario Hospital Association, so we have come to this conclusion from our own experience. But Johanne, perhaps you would like to comment in terms of the question vis-à-vis: Will this stop treatment in its track, or potentially?

**Ms Mousseau:** I think because of the broad definition of treatment, it may bring everything to a grinding halt. I suppose if treatment was redefined to be more specific in terms of looking at any kind of treatment which has the potential for physical, mental or emotional harm, then you are looking at all of the activities you have mentioned. They could be health promotion, treatment, rehabilitative treatment, palliative. But otherwise, in its broad context, I feel, and certainly my colleagues feel the same way, that it would certainly bring us to a grinding halt before we could do anything.

**Mr Curling:** I should first state to you that I am not a lawyer, so some of the questions I ask are really basic. Lawyers have a rather refined and implicated way of explaining things or asking questions. So I would just ask in this very straight manner. You deal with many doctors of different disciplines. Are you saying, then, that in an emergency case, you would almost be stopped, because of how treatment is being defined, what doctor to call?

**Ms Mousseau:** We would institute treatment ourselves, especially working in the community. In an emergency, we may be doing something that a doctor would do in the hospital and so that really puts us in a terrible position. I think in parts of the legislation—I need to have my memory refreshed here—that certainly physicians can act, but there is nothing there about nurses acting in an emergency. Is that not correct?

**Mr Wessenger:** No. I think, for some clarification, it is a health practitioner.

**Ms Mousseau:** Any health practitioner?

**Mr Wessenger:** Any health practitioner may act in an emergency.

**Mr Curling:** That is why I like lawyers. Sometimes it is the health practitioner and sometimes it gets pretty wide.

**Mr Sterling:** Or you might interpret "any health practitioner" in your mind in an emergency, depending on how you read the act.

**Mr Winninger:** We do know it does not include lawyers.

**Mr Curling:** In understanding this, you proceed on your way until you understand this act, like, "Oh, I understand it." Let's compare it with a policeman who is driving along the road, sees someone driving, pulls over that individual, and the person is extremely tired. So he would say, "Come out," but he is not quite sure if that person is tired—he looks drunk, so he diagnoses him a bit that way. He, or she, the policewoman, asks for a breathalyser test. So he took the test. In other words, the policeman has acted and moved on to treat or to diagnose himself. Would you say the policeman has more intrusive right of consent to proceed for diagnosis than a doctor in this situation, or a nurse?

**Ms Murray:** Are we speaking specifically? If we look at the legislation, it says "health practitioner." Before we proceed with a health-related activity—and I look to Mr Wessenger to clarify it if I am incorrect—under the definition of treatment under consent, we are precluded until we have an informed consent, if the person has capacity. If the person does not have capacity, we must then move to establish the



call for the advocate, in writing etc, and for the advocate to explain to them that they have been deemed to be incapable, and to proceed thereafter.

**Mr Wessenger:** I think you are correct in the non-emergency situation, yes.

**Ms Murray:** I guess this is what we are saying: We believe in this, but can we make it work for people, in the sense of, is the emergency situation defined well enough that we could still have the concept of informed consent and the right for people not to have treatment imposed on them, but on the other side to make sure that we do not preclude giving speedy treatment to relieve pain and suffering? In effect, we could find that we go to the home and the person requires a nursing intervention which is reasonable but for which he has not given written formal consent and he is incapable.

**Mr Wessenger:** Well, I think the minister has indicated that she is looking at the legislation with respect to dealing with the matter of palliative situations, severe pain, so that the health practitioner can deal with the matter of the palliative thing. She is also looking at the question of some other changes. While you have asked me a question, I might ask you a question. Would it help with respect to non-emergency treatment if the role of the advocate was limited, say, on a time basis, every six months or something like that, so that you would not have to continually call back? Would that be of some assistance in this regard?

**Ms Aerola:** I am thinking about that right now and I am just trying to process as to how that would happen. While you were talking, I was thinking about the types of clients we deal with and the type of environment we deal in and the impact on the individuals out there providing care, as well as the individuals, because we have a very high elderly case load, a very frail case load, and competency may fluctuate with these individuals from one day to another. The whole issue of consent to treatment and advocacy could fluctuate from time to time.

Whether you handle that on a six-month basis if it was established that people may be capable of making decisions at certain times and may not be capable at other times, depending on how their health status is, from my perspective, thinking of the frontline people out there, I see it as an extremely difficult situation to handle, because potentially they are going to have to be in the decision-making role of: "Well, this is what I'm dealing with now. Do I bring in or not bring in?" So in certain circumstances, yes, we may be able to identify that it is sufficient, and then in other circumstances, because of the changes in health status and people's levels of impairment, that may not be suitable.

**Mr Wessenger:** Yes, I can see what you are saying. At times, one month, you might determine the person to be incapable, you have an advocate come in, advise him of his rights, and then the consent is given by the substitute.

**The Chair:** Mr. Wessenger, I believe Mr Curling still has some questions left.

1600

**Mr Curling:** I know that Mr Wessenger needs a lot of explanation of his own bill.

The nursing field that you are in is much more on the outside in the community quite often. I have heard presentations here talking about deinstitutionalizing many of these institutions, that they could be out in the home and could be served better by the community or by groups.

You would see yourself needing a tremendous amount of consent now, because there are more people now in homes to be treated, so to speak. The bureaucracy you talk about would have to be an extremely efficient bureaucracy to have the advocacy situation in place, the consent situation in place, so you can proceed in doing your treatment. Do you see a real nightmare here? I know you say that advocacy is something you welcome, but to would you say this is rather premature how this is drafted, that maybe they have not thought it through properly? Is that your impression of these bills?

**Ms Mousseau:** I think there are some problems with the bills. I think that certainly the intent is good. Maybe I could be a little more specific in terms of the whole issue of treatment.

What is difficult for us is not only the idea of having an advocate to consent for the person who is not capable of consenting to treatment, which would slow us down, but the way "treatment" as presently defined, we would be performing multiple treatments in the home. For instance, after you have walked in through the door you may take someone's blood pressure—anything that is done for diagnostic purpose. We might assist that person with bathing and dressing. That is a health-related treatment. Then we might do a dressing for a wound. Again, that is a therapeutic treatment. So you can see that there are multiple treatments.

What is not clear at this point is, would you need consent for each treatment or would you continue with the present system? For instance, in hospital where you sign a consent form at the beginning, that is for every treatment. I suppose that is not clear.

**Ms Murray:** If I may also follow up on that idea, very often it may be harder for us in the community than it would be for a physician or in the hospital, because remember, our approach is holistic. We are looking after the whole person, so we are looking at the physical, emotional and psychological needs. Does this imply, as Johanne has said, that we need multiple consents? How long does the consent stay in effect?

Under the legislation you specifically say that it is a consent for a "particular" treatment. So if we could look at that, in the way of phrasing it. I do not want to fall into the trap of saying that we do not need any legislation on consent; we do. What we need is clear legislation that is going to get to the purpose of what we want, which is for people to know what is happening in terms of their health care, to voluntarily give consent, and that the consent is specific to the issue at hand. But is there a way to write the legislation that makes it clear that one consent perhaps could do in the case of long-term care? Your point was well taken, Mr Curling, about the move to providing care in the community.

How can we do this? At the moment, as I said, we use "implied consent," the fact that the person has accepted the referral, that he opens the door, that he does not say, "No, don't bathe me," or "Yes, do bathe me."

I again ask you to give serious consideration to subsections 5(3) and then (4), as to whether that implies you want us to move to the formal consent, which will, to answer your question, cause us a great deal of difficulty in the sense of the time it will take to do those and then all of the issues that become involved: changes of health status, cognitive status, when do we call the advocate, when do we get into the list of who can give consent.

**The Chair:** Thank you, Mr Curling. I think we have a point of clarification now.

**Ms Auksi:** One point of confusion may be that it is not the advocate who provides a consent. The role of the advocate in the Consent to Treatment Act is purely, where there is a finding of incapacity, to ensure the person knows he has a right to dispute it if he wishes.

You have said that to some degree people you are working with may have ongoing incapacity; they may have fluctuating incapacity. If they had fluctuating incapacity they would probably be in a good position to express what their wishes were with regard to treatment, so you would have competent wishes on which treatment decisions could be based, even in the absence of a substitute decision-maker.

Basically, if you have people who are incapable, then you would really have to be obtaining consent for each treatment or series of treatments. A course of treatment does not mean that there has to be a consent every time the treatment is administered, and I would think in your work there would often be a series of treatments, but really it is one and the same thing that is occurring on a regular basis.

There would be no reason why consent from the substitute could not be obtained, say, at the beginning of such an intervention. You could say, "For the next number of months, these are the things that are recommended." Once the finding of incapacity had been established, once there had been an opportunity to meet with an advocate and either it had gone to the review board or not, and then once the incapacity is established, the substitute decision-maker could make those decisions.

The thing is that preferably, if you were dealing with someone who is ongoing incapable, you would be better off looking to the Substitute Decisions Act with a guardianship regime, because there might be all kinds of decisions, not just health care decisions, involved. In that case, it is the family member, presumably, who would initiate the steps for that, to be an ongoing decision-maker.

**Mr Sterling:** I am very much interested in your comments, because I have an unbelievable respect for the VON because of the service you have provided to the people of Ontario, particularly in my area in Carleton, where I represent a number of rural municipalities as well as the city of Kanata. I take with great interest and great concern your comments about consent and your ability to obtain consent from an advocate when required.

As I read the legislation now, the only opportunity a health care provider has in even diagnosing a patient is

when there is an emergency which is life-threatening. There is some kind of 12-hour limitation. I think the minister is going to drop the 12 hours, if what we hear is correct. My concern is for the pain and suffering of an Alzheimer's patient—the needless pain and suffering. I refuse as a legislator to make legislation which will allow a person with a broken arm, which I guess you could argue is not life-threatening, to be in pain and suffering for a period of time until we can find an advocate. Would the parliamentary assistant like to enlighten me on how he would deal with that situation?

**Mr Wessenger:** I think the minister has indicated that is one of the areas that will be changed with respect to the emergency provisions, to try to come up with some sort of language to deal with the problem of the matter of pain. That is one of the many items that is being looked at under the section. We certainly have assurance from the minister that she is aware of the problem with respect to the pain situation and that it is something that will be taken into consideration, along with whatever else we hear. There are many other points that are being raised at these hearings with respect to emergency provisions, and I think we will want to look at all those points that are being raised so we can draft the appropriate changes that are required to meet all the needs with respect to the emergency legislation. That is just one among many aspects that has to be looked at.

**Mr Sterling:** Yes, but the trouble with us not having a definition in front of us, or a revised definition—these people have tremendous experience in the field. They represent an unbelievable number of situations that occur out there. Without the definition of what an emergency is or is not, we deny these people the opportunity to tell our committee whether or not your revised definition of emergency will fit into their situation. It leaves me as a member of this committee and the people in a position where they cannot make comment. I think you should come forward with what your thoughts are on this.

1610

**Mr Wessenger:** With respect, Mr Sterling, I think we are listening to the concerns that are being raised and I am confident the concerns will be met when we get around to making—

**Mr Sterling:** How do we know that? We do not have anything in front of us to go on.

**Mr Wessenger:** That is the purpose of these hearings, to hear the concerns, but we do not make amendments piecemeal; we do it on a comprehensive basis.

**The Chair:** I believe Ms Murray wants to respond to this.

**Ms Murray:** I would like to respond to the point raised by the assistant to the committee. That was with regard to the issue of the advocate becoming involved and your clarification of the substitute decision-maker. But let's take the Alzheimer's victim and his family, and it is a non-emergency situation. This speaks to the issue about the office of the public trustee. Have you ever been involved with the office of the public trustee?

**Ms Auksi:** That is not—



**Ms Murray:** In terms of the administrative backlog, the problems that—I am not speaking here negatively about the office, but if we are going to go that route, in this case the family would have to seek the power of attorney for personal care and for property or the substitute decision-making capacity under the act. In my comments I made the point that we are going to have to give families assistance to do this. I have tried to seek guardianship under existing legislation in different situations, not in my capacity now at VON because I am not working directly with families; I am with clients. It is a difficult process, so please take that into account when you are thinking about it, and think about the time it takes to go through those processes.

**Ms Auksi:** First of all, there are provisions in the Consent to Treatment Act which will allow for usually a family member to step in in cases of temporary incapacity, where it really is not appropriate to go to a formal guardianship, or of course under the Substitute Decisions Act a person could say in advance who he wanted to make decisions for him and that person would be the one who would make decisions for him under the Consent to Treatment Act.

The advocacy role is really in the area of, when is that person incapable? The whole notion is that unless you have somehow had a chance to address that question—“Do you accept the fact that you are incapable? Do you accept the fact that someone else is going to be making a decision for you and not yourself?”—that is the role of the advocate, to step in and say: “Do you know the implications of this? Do you agree with this finding? Do you want to go and dispute it?” There is a mechanism, and it is a quick mechanism, much like what is in the Mental Health Act now, for disputing that.

If someone has long-term incapacity, as the Alzheimer’s victim would have in the later stages of illness, then if he has not said in advance who he wants to make decisions for him, he may well need to have a court-appointed guardian. If they have that, it would mean they would not be receiving advocate visits repeatedly, because the advocate meeting, as I think Steve could say, is at the point where an application for guardianship is made, and there would not be repeated visits by an advocate in that case.

**The Chair:** Mr Sterling, one more quick question?

**Mr Sterling:** Yes. As I understand, one of the things that would work is if the family and the person involved try to avoid the court process. As you say, it is a long and expensive process. It can or it cannot be expensive. But in spite of the fact that the person has made the choice to appoint his child or his spouse as the decision-maker, you still have to call the advocate. That is one of the parts I see as very difficult in terms of, what is the sense of going through it all? The bottom line is that you cannot avoid the advocate in terms of having that person out to the house, every time you want to undertake a new treatment or a different treatment, even though you have the trusted person who has been designated standing beside the Alzheimer’s patient. I just do not think the intrusion of an advocate is necessary at that time.

**Ms Murray:** I think that was the point I was trying to make early on in the first part of the presentation. I think

we have to decide, when we are looking to this, what we are trying to achieve in the legislation, and if we in effect have created something more than what we really wanted. It does raise that third party having to be involved when in fact there has been an agreement between the spouse and the person concerned and beyond that in terms of then legalizing the whole living will concept as opposed to using common law to develop it.

**Mr Wessenger:** I would just like to clarify something with respect to the question of consent. Consent can still be implied under the Consent to Treatment Act. There is no intention to take away the implied consent that now exists. The prescribed forms for consent are only contemplated for the much more complicated procedures that would take place.

**Ms Murray:** Perhaps that could be specified in the legislation. That is what we are asking for.

**The Chair:** Ms Aerola, Ms Murray, Ms Mousseau, thank you very much for taking the time out today to give your presentation.

**Ms Murray:** Thank you very much.

#### RIGHT TO LIFE ASSOCIATION OF TORONTO AND AREA

**The Chair:** I would like now to call forward the Right to Life Association of Toronto and Area. Good afternoon. Could you please identify yourself for the record and then proceed.

**Mrs Scandiffio:** My name is June Scandiffio. I am currently the president of the Toronto and area Right to Life. To my right is Gwen Landolt, a lawyer, and to my left is Eugene Pivato, researcher for the Right to Life association.

I would like to thank you for hearing our concerns. I think a lot of the community’s concerns overlap, and I am sure you are going to be hearing many of the same concerns you have already heard previously.

I would like to divide our presentation up so that I speak mainly to a living will and to subsection 47(5) of Bill 108, but as well to Bills 7 and 8. We wish there was more time—we had applied—and you should have copies of our briefs to both proposed pieces of legislation, Bills 7 and 8 and the government proposal. We would ask you to look at them, especially our concerns at the end. We will not be able to touch on all of them today because of time constraints.

One of my concerns, I suppose, in looking at Bills 7 and 8 and as I mentioned, the proposed sections in 108, is the reason: Why we are looking for living will legislation that is worded in the way that it is? According to common law, the patient currently has the right to accept or refuse treatment unless the patient is a minor or in some other way incompetent. Then the family and the attending physician, or in the case here, the VON, together usually try to work out something that is in the best interests of the patient.

We applaud the concern the community has. The legislation attempts to look out for the welfare of the vulnerable, but I have to question whether we have evidence that patients are either being overtreated or treated inappropriately, especially if we are looking at Bills 7 and 8, when they are dying.



I would be interested to see if there have been many letters of protest or complaint to the Royal College of Physicians and Surgeons about the care of the dying. I think the presumption behind these bills is that we have been inundated as a community with inappropriate care for the dying. Have families been denied placing their dying relative under the care of another doctor if they do not agree with the treatment plan proposed? We would like to hear about this and what evidence there has been in the community for the necessity of these bills.

Years ago when living will legislation was being proposed, Dr McMurtry, who was at the trauma unit at Sunnybrook Hospital, expressed great concern for himself as a medical practitioner, especially as he worked in the trauma unit. Would he be hampered, similar to concerns we just heard a few minutes ago? When time is of the essence and they have to make snap decisions, would they have to spend the time going through people's pockets to see if they have a living will? If they did not find the living will, would that preclude or presume that the patient wanted a treatment that may not be appropriate? In other words, are we taking away from the doctors the judgement of what is appropriate care in these circumstances?

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Our concerns in terms of voluntariness and again, the definition of "treatment," we find far too vague. We would like that tightened up to see what exactly is meant by "treatment" and what is included. The voluntariness especially of the elderly and vulnerable, who may increasingly feel that they are a burden to society, is a real concern of ours. When they are signing such directives, when they are appointing someone else to make decisions for them, is there true voluntariness and do they understand what "treatment" means? We find it too vague.

In addition, I would like to say that we have concerns about this consent or giving the power to someone else to make decisions about your health care. What is the mechanism for revoking that? We seem very interested in putting it into place, but I do not see any mechanism in the proposed legislation for the revoking of it. I guess that was the concern here with the VON as well, that sometimes it is not always so clear when the person is competent. Would it be just before surgery that you make this decision? In other words, is there an expiry date on it, and what is the mechanism to go through that?

There are a number of problems that we have with the legislation as well that I would like to hand over to Mrs Landolt at this point and then you can question us further.

**Mrs Landolt:** Our view is that the concept of these bills is to care for people who are vulnerable. We are very sensitive to that and we do appreciate the objective, but our concern is that these bills have far overreached their objectives and will cause more difficulty and more problems for the vulnerable than if we had never passed them.

The position on Bill 74, the Advocacy Act, the concept, is wonderful. There is no question about that. When you have vulnerable people in a nursing home, a chronic care home or whatever, that somebody will be there to speak for them we think is something that is very needed and

very important. We are glad to see that they will be drawn from those in the community who are affected, the aged or the people in the AIDS community. That is a very positive advancement.

But we have tremendous problems with Bills 108 and 109. They are so complex and complicated. In the 20 years that I have been reading legislation, I have never read anything as complicated as these bills. Even the Income Tax Act did not measure up to these bills. The difficulty we find with them is that there seem to be enormous loopholes. I will give you one example that I find very troubling.

In Bill 108 you have very clear statements as to the power of attorney for property. Section 8 says how you determine incapacity, section 9 defines it and also it is very clear that section 9 says that the person must have a capacity in order to sign the power of attorney for property. But you have the bizarre situation that the power of attorney for personal care, which means literally their life or death, is not as clear.

It is very ambiguous. There is no statement in there saying specifically that you must have the capacity to do a power of attorney for personal care, which it says specifically with regard to property. There is no provision saying what constitutes incapacity with regard to that personal care, which is present with regard to the property, so you have the problem that a person may well sign the power of attorney for personal care and not have the capacity. I know it was never the intention, but that could be picked out of the ambiguity because subsection 47(9) of the legislation says the power of attorney for personal care does not take effect until validated by the public trustee. Then subsection 49(6) sets out what the public trustee must do. He must send in the advocate and he must do so and so.

Section 50 sets out who may perform an assessment as to capacity but it is not clear that this is mandatory. Subsection 49(7) does state, "The certificate shall state in respect of which functions referred to...the grantor is incapable," upon the opinion of the assessors in 50, but it is not clear this is absolutely mandatory that this person be assessed. It says the following people under section 50 may do an assessment.

The other problem is, who is the assessor and on what grounds does he or she make that assessment? The difficulty is that it is to be set up under the regulations, and such an enormous power to determine life or death should not simply be handed out by regulation. It does not say, again specifically, that they must have the capacity as with the power of attorney. I know it was an oversight and I know it is ambiguous, but it is not precisely clear. This means the person can sign a power of attorney for personal care and it includes, for example, "nutrition." So this person who may be confused, who does not understand, passes over his power and under this the person can legally withdraw the very ordinary care of nutrition.

You may say that is preposterous, but you are leaving the possibility open. As I sit here today I hope it will never occur, but if I have a power of attorney for personal care from someone I also have the power to determine whether the person will get water and food because that is included. It also means that the person who may be socially inconve-



nient, who may be a vegetable or whatever you want, can have it withdrawn. You are giving extreme power to this one person who has the power of attorney for personal care, which is excessive power and it is very troubling.

The second thing—I am looking at section 51—is that you find a power of revocation for the power of attorney for personal care has only three provisions: first, if a guardian is appointed—it says the revocation takes place when the power of attorney dies or when the court appoints a guardian when the power is revoked. If the person did not have the power to make the power of attorney in the first place then how does he have the power to revoke it? Hopefully he regains his capacity, but there is great doubt whether he would; and second, when a guardian is appointed, but who will come forward to make application? Does any person? It may be that this again will never come to pass, so it means the person who holds the power of attorney for personal care has enormous power of life or death, which is not delineated. It is not restricted in any way. I will give you an example. Under the power of attorney for personal care, the only restrictions are under subsection 47(6), where the person who has the power of attorney for personal care cannot authorize sterilization or psychosurgery. But you know that a court-appointed guardian has many more restrictions. He cannot order drugs for the purposes of restraint, but this person with the power of attorney for personal care has much broader powers than even the guardian.

I know this is all very complicated and I know it is very boring, but it is very vital to see that these problems—maybe I can simplify it. I ask you to turn to page 36 of the brief where we do list, hopefully as straightforwardly as we can, some of our concerns which are arising.

I am just giving you an example of some of those complications. You have these four complex bills and maybe all different people are drafting them, but they really are not aware of some of what is happening. I must say it is so confusing that when I was going through them I had a strong temptation to throw the whole works out the window and walk away from them because it was so complicated getting all these bills into juxtaposition to know how they interrelated.

We have great concerns with Bill 109. Much of it was mentioned by the previous speakers on the question of consent, the delays. I do not have to go over all those things again, but Bill 109 also presents a great many concerns to us and, as I say, you can read them in our brief.

One of them is a very basic question. For example, it defines someone being able to give a consent as someone 16 years of age. That person may be, say, a 16-year-old girl. What is more provocative than the word “abortion”? She may want one and her parents may not want her to have it. Alternatively, the parents may want it and she may not want it. Under Bill 109, she can go to the Consent and Capacity Review Board, but there is no provision in there for the parent to be notified or to be there before the board. The studies indicate that these young girls do need the support of family, but there is no reference to family, to letting them be notified to appear before the board when this vital life or death decision is being made.

## 1630

The other problem is, what we would like to see, because of the financial aspects, the complexity and the vulnerability of the vulnerable person, who I would argue is made more vulnerable by this legislation rather than less vulnerable, is that Bills 108 and 109 be scrapped, yet the Advocacy Act take effect and give the advocate some power.

Under Bill 74 the advocates are set up. It is an empowering act for the advocates, but it does not say what they can do. Again, we have to resort to our old regulations which will come down the mill eventually. But why not let the advocates, if they have a difficulty, report it to the consent review board? Skip 108 and 109, the common law pie with regard to consent. If they go into a nursing home and they see someone is in need of care and is not getting it or whatever, let the advocates then be able to bring an application before the consent review board, but of course the family must be notified. Again, the provision for the family has been pushed down out of sight. Bill 109, whatever the section is, lists who takes precedent in giving consent. That is in 109. The family is way down at the bottom of the barrel. You have everybody else taking precedent over the family, and that again is a problem.

Our recommendation is, one, the Advocacy Act is a wonderful concept, because all of us know that people are vulnerable and need protection. Skip 108 and 109, which are so complex and have so many loopholes, and I have not even begun to touch on some of the loopholes; they are in our brief. What I would suggest is, if he sees a need, let the advocate be able to go over and apply to this consent review board which is set up under 109, and there must be a provision that the family be notified and that the family could be involved.

There are exceptions, there is no question about it, but most families do care deeply about a family member who is ill or vulnerable. Let them have a say; let them be partners in this procedure. They are simply pushed right down almost out of sight in the consent bill. What has happened is, you have a bureaucratic position taking place. The advocates are fine, but they really do not have a role, because their role is they are supposed to be nice and make sure the person is looked after, but it does not say what they do with that. Under Bills 108 and 109, they have to go and see and talk to the people, but the previous speakers have already pointed out the enormous problems of bringing in the advocate.

We do know that the question of capacity for the power of attorney for personal care is not clear. We know there are so many complications from 108 and 109 with regard to consent. Why do we do that? Why do we not just simply follow the common law under the Malette case, which is the most recent case, 1990, when the Ontario Court of Appeal said the patient has the authority to decide? In that particular case the woman was a Jehovah's Witness. She had a piece of paper in her pocket which said, “I don't want blood transfusions,” and the Court of Appeal said the doctor was wrong in performing this medical procedure without her consent. That is an enormously strong decision.

We also have other complications. If you put forward this legislation under consent and under all these other

provisions, you are going to find that the question of ultra vires comes in. The federal Criminal Code, as you know, has very specific sections—219, 215—to say what a doctor can do and what he cannot do. It is criminal law. You are going to have an invasion of the criminal law. Certainly as I sit here today, I would suggest that you are going to have a lot of court challenges on this legislation as it stands. I guess that sums up a few of my concerns.

**Mr Fram:** Your key area of concern about Bill 108 is the appointment of someone having authority under a power of attorney for personal care. This afternoon we had the Metro Toronto Association for Community Living brief, and they are concerned about not having an emphasis on guardianship. One of the suggestions they have made is that one route is using the appointment of someone you trust, the key person you trust as your attorney for personal care. It becomes important for me to understand whether your major concern is whether it is about the capacity to say what treatment you want or whether it is focused on the question of having any authority to choose who will make decisions afterwards.

**Mrs Landolt:** I will just answer. The first thing is, a person already has authority under the Malette case. The common law has always been that he has the authority. If he or she is incapacitated, you then have the family. You already have the capacity; that is the problem. But the question is, when you give a power of attorney for personal care, their power is so enormous and so broad you do not know if they have a conflict of interest or anything like that.

**Mr Fram:** First, at common law the family do not have any authority if you are incapable.

**Mrs Landolt:** Yes, they do. I am sorry, they do.

**Mr Fram:** Under the Public Hospitals Act regulations, family are named; no other place in common law. The issue did not really arise until the 20th century treatment mode. You have all kinds of family members. You have family members you trust to know what you want and you have family members who pay no attention to you at all. My real question is, do you object to choosing the person who is important to you, or is your major problem

about capacity to choose a treatment decision that will bind that person?

**Mrs Scandiffio:** My concern is twofold: First, voluntariness is absolutely key—I think we would all agree on that—and the temptation or perhaps the coercion, either overt or just implied because they feel they are being a burden.

I think the idea of saying you want to select someone you trust is reasonable. The way it is defined, as I understand it, “treatment” is far too broad. That is one of our major concerns: that according to our understanding, if someone signs a living will, “treatment” has not been defined under this legislation. You are giving them carte blanche. We presume that the person appointed or who they have said they want to look after their best interests is someone they trust. We presume that is the case.

However, we have seen cases where the competency kicks in and out. Say I appoint Gwen as my legal guardian or the person I want to appoint to make my decisions. We have not decided, first of all, what “competent” means. When am I incompetent? Again, it is not always so clear.

The second thing is, am I giving her carte blanche? What is included under treatment? That has to be defined. I think a number of people presenting to your committee have said that as well. It is just too vague. The idea of what is going to happen, what is the mechanism for my withdrawing that?

As Gwen mentioned, we have lots of checks and balances when it comes to the financial power of attorney. If we are going to enact legislation on personal health care power of attorney, we should have at a minimum the same checks and balances. As I see it right now, there are not the checks and balances for revoking it, for defining who is competent and that type of thing. If you are going for this type of legislation, the minimum we owe to our citizens is the same protection we give when we are looking at the financial aspects.

**The Chair:** On behalf of the committee I would like to thank you, Mrs Landolt, Mrs Scandiffio and Mr Pivato, for giving your presentation today. This committee will stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1641.



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## Official Report of Debates (Hansard)

Wednesday 12 February 1992

## Journal des débats (Hansard)

Le mercredi 12 février 1992

### Standing committee on administration of justice

Advocacy Act, 1991,  
and companion legislation

### Comité permanent de l'administration de la justice

Loi de 1991 sur l'intervention  
et les projets de loi  
qui l'accompagnent



Chair: Mike Cooper  
Clerk: Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 12 February 1992

The committee met at 1007 in committee room 1.

### ADVOCACY ACT, 1991, AND COMPANION LEGISLATION LOI DE 1991 SUR L'INTERVENTION ET LES PROJETS DE LOI QUI L'ACCOMPAGNENT

Resuming consideration of Bill 7, An Act to amend the Powers of Attorney Act; Bill 8, An Act respecting Natural Death; Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons / Projet de loi 74, Loi concernant la prestation de services d'intervenants en faveur des personnes vulnérables; Bill 108, An Act to provide for the making of Decisions on behalf of Adults concerning the Management of their Property and concerning their Personal Care / Projet de loi 108, Loi prévoyant la prise de décisions au nom d'adultes en ce qui concerne la gestion de leurs biens et le soin de leur personne; Bill 109, An Act respecting Consent to Treatment / Projet de loi 109, Loi concernant le consentement au traitement; and Bill 110, An Act to amend certain Statutes of Ontario consequent upon the enactment of the Consent to Treatment Act, 1991 and the Substitute Decisions Act, 1991 / Projet de loi 110, Loi modifiant certaines lois de l'Ontario par suite de l'adoption de la Loi de 1991 sur le consentement au traitement et de la Loi de 1991 sur la prise de décisions au nom d'autrui.

### ONTARIO ASSOCIATION FOR COMMUNITY LIVING

**The Chair:** Our presenters are from the Ontario Association for Community Living. I would like to welcome you this morning. For the record, could you please introduce yourselves and then proceed.

**Ms Stone:** I am Nancy Stone, past president of the Ontario association.

**Ms Cole:** I am Audrey Cole, chairperson of OACL's task force on advocacy and guardianship.

**Ms Sandys:** I am Judith Sandys, a member of the task force.

**Ms Stone:** We are very pleased to be here and to have an opportunity to present to this committee.

As you were informed previously by the Honourable Howard Hampton in his remarks on December 16, OACL is concerned about the very concept of guardianship. Contrary to the minister's statement, OACL does not "represent about one third of the families of people with mental disabilities"; in fact, OACL represents individuals in the province who have developmental handicaps. Nor does OACL bring to you a service provider's perspective, as has also been suggested.

Contradictory perceptions notwithstanding, OACL's role is clearly defined by the objects of its constitution. In

coming here today, OACL is fulfilling its responsibility to "promote the rights...and welfare of all persons who are identified as having a developmental handicap...[and] to assist persons [so identified] in realizing their individual potential within the community."

Audrey Cole, chairman of our task force on advocacy and guardianship, will speak to our concerns.

**Ms Cole:** OACL's concerns relate primarily to the package consisting of Bills 74, 108, 109 and 110 and the effect this legislation will have on a particular group of people. These people are among those who would be unlikely to qualify for a case advocate under the Advocacy Act as it now reads. Due to the severity of their disabilities, they would be unable to instruct the advocate or give the necessary consent for access to their records. They are among those for whom an explanation of the effects of a finding of incapacity would have no meaning were they to be presented with that information under section 10 of the Consent to Treatment Act. They are among those who would inevitably be found to be incapable of personal care under the definition in section 46 of the Substitute Decisions Act. They are people who have severe intellectual disabilities. They are, without doubt, the most vulnerable of people identified as having developmental handicaps.

The essence of OACL's concerns was identified unintentionally but explicitly to the justice committee on December 9 when legal counsel to the advocacy project team for the Ministry of Citizenship told members of the justice committee that, "[Guardians] replace the individual." OACL's question for the government is, how in this era of equality and justice for all people can we in Ontario be considering implementation of a guardianship system designed to legally "replace" our most vulnerable citizens?

One official of government claims that OACL is responsible for this guardianship initiative. It is true that the association used to share the belief that guardianship provided protection and was therefore good. Experience proves otherwise, however. There is no evidence that guardianship law does or can protect people from abuse or neglect. Laws alone cannot do that. Abuse, neglect, exploitation are social, not legal, problems. Only people can protect people, just as it is people who abuse people.

Neither does guardianship enable people to exercise rights they were not previously exercising. In the first place, not exercising a right does not justify taking it away. Second, once the right to make decisions is judicially removed from people and vested elsewhere, it is no longer theirs to exercise. It is a fiction to suggest otherwise.

Our right to make choices and decisions and have them respected is critical to our personal wellbeing. Our choices confirm our human identity and image. Without those rights we are social nonentities. Sadly, that has been the history of people with intellectual disabilities. Stigmatized

by derogatory labels, they have been ridiculed, pitied, feared and hated. They have been segregated within or excluded from school, work, natural relationships, community life and citizenship. Now, just as they are beginning to emerge from centuries of social isolation, this legislation will turn back the clock. It sets up a seemingly benign system to channel a particular segment of such people into legal and social oblivion; findings of incapacity are usually self-fulfilling when disabilities are severe.

Despite its benevolent appearance, guardianship remains a paternalistic concept, the effects of which are intrusive, restrictive and destructive of the person and the status of those on whom it is imposed. Not only can it not protect the person in the physical sense; it cannot protect the value of the person as a human being or as an equal citizen.

The Fram committee could not view guardianship as a "positive good" because of such unacceptable consequences. Instead, they saw it as a "necessary evil." Under the double standards of this necessary evil, more of those unacceptable consequences will be generated than by the archaic Mental Incompetency Act the legislation would replace. Two classes of citizen will result: one for those of us whose status and identity are not threatened and also for those entitled to support, particularly through the Advocacy Act, in protecting their rights and furthering their own interests; the other class for those whose right to self-determination will be formally removed by reason of disability.

The Fram report was the catalyst for changing OACL's thinking about guardianship. As members of the Fram committee, with the advantage of hindsight, we believe we were asking the wrong questions about why guardianship seemed to be necessary for certain people. When we start by assuming that certain people are unable to exercise their right to self-determination because of their incapacity, we inevitably look for solutions in the appointment of others to make decisions for them. Mindful of the intrusiveness of that process, we seek to temper it by imposing the least restrictive of a known series of confining alternatives, such as full or limited guardianship, all of which take away rights to some degree or other.

Had we asked how decisions are made rather than who decides, we would perhaps have recognized that the road to self-determination is rarely travelled in solitude. Typically, we make that journey interdependently, in the company of those who care about us. It is not usual for us to make decisions alone and unaided. We make decisions with the affection and support of people we trust—family, friends or others whose opinions we respect. When we enjoy the presumption of competence or capacity, we are never asked to reveal that we had support in making our decisions, nor are we required to prove our capacity to make them independently. To subject others to such requirements on the basis of disability is discriminatory.

Had we not concentrated on who decides, we would have seen the need to provide for everyone the same opportunities for support in decision-making that most of us take for granted. In the spirit of equality, we would have recognized the need to validate decisions resulting from such support in the name of the person at the centre of it. Perhaps then we would have looked for the most enabling solutions in

an infinite and untapped reservoir of alternatives for empowering those of us who are disadvantaged. Rather than competence, we would have been thinking about accommodation. The disadvantage for people with intellectual disabilities is that their decision-making capacity is doubted or denied. Guardianship law cannot accommodate to that disadvantage. To place people under the control of others can, instead, contribute to greater vulnerability.

We must design enabling legislation that validates the decision-making process of those people whose decision-making is discredited, without diminishing either their personal rights or their human identity. Such legislation must be based on clear principles which assert the inviolability of the rights to self-determination and presumption of competence. Such legislation must recognize not only entitlement to support in decision-making, but also that the amount of support that goes into interdependent decision making is not a ground for either discrediting decisions or compromising autonomy. It does not do it for those of us who presume to be competent. Why should it do it for people who we suspect are not?

Such legislation must recognize that decision-making can, and usually does, take place within chosen and trusted relationships, that the choices and wishes can be made known with or without assistance, through typical and non-typical means of communication, and that some of those non-typical means of communication may only have evolved and may only be expressed within those trusting relationships. It must also recognize that it is the duty of the state to accommodate to disability by enabling the necessary support to be built around people who have severe intellectual disabilities. Only by such principles can the presumption of competence and the right to self-determination be ensured for everybody.

The demand for guardianship is largely driven by the needs of others for legal decision-making authority. Such third-party interests are valid and must be addressed, but only under the same principles that would govern primary enabling legislation. Amendment to relevant law dealing with legal consent contract law and liability in medical or any other context would be necessary, as would provision for resolution of conflict and also checks and balances for prevention of abuse both of individuals and of the decision-making process itself. The spirit of such law must be to lessen disadvantage.

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There was a time when society made no accommodation to disability. People who could not walk up the steps stayed where they were. Similarly those people who could not see or could not hear were not expected to share the same opportunities as those who could. Disadvantage was just believed to be a fact of life for such people. Today we find such assumptions unacceptable and we struggle to accommodate for disability.

We believe in OACL that this justice committee and other members of the Legislature of Ontario share that struggle. We have every confidence that all of you will recognize the need to accommodate to the disabilities of those who are presently among the most vulnerable of Ontario's citizens. The members of OACL will join with



you in the effort to protect the freedom and dignity of all people. Guardianship law would make no contribution towards that end.

**Mr Chiarelli:** I want to say I was impressed with your arguments and your presentation, particularly the comment that to subject others to the proposed process here basically is a type of discrimination and your comment that:

"We must design enabling legislation that validates the decision-making process of people whose decision-making is discredited, without diminishing either their personal rights or human identities. Such legislation must be based on clear principles which assert the inviolability of the rights to self-determination and presumption of competence."

I take it, first of all, that you want to go back to the drawing board and that you do not support the legislation as it is presented at the present time. I have been suggesting on a number of occasions that I really do think we should go back to the drawing board with these pieces of legislation and perhaps look at new legislation in draft form, rather than looking at live legislation which has gone through second reading. I would like your assistance, if you can, in suggesting models of legislation in maybe a little more detail than you suggested. You have indicated some principles upon which you would rely, but can you give the committee some direction as to the type of provisions or some specifics you would want in newly designed legislation?

**Ms Cole:** In section 5 of our brief we have tried to do that. We have a small section there which is called, "Towards a Legislative Framework for Change." It is based on the fact that guardianship by nature is discriminatory and targets particular groups of people in society for a different kind of benefit, an unequal benefit, than for the rest of society. The necessity is to devise legislation that would enable people whose decisions are discredited by reason of disability to have the same presumption of competence and to have the same right to self-determination that everybody else has, and it has to be legislation that is specific to that purpose, that has nothing to do with those other things like when legal decision is required or medical contract things, that only has to do with enabling people to be regarded as capable. It would have to be very clear on that, that there is not a process, or should not be a process, by which some people can instantly be declared incapable. In other words, that presumption is inviolable.

It would have to recognize, as I said earlier, that independent decision-making is a myth. We do not make decisions alone. Very few of us make decisions alone. There would have to be something in that to validate that, just as it would for all of us. This is not legislation that would only affect people with disabilities. It would be legislation we would all benefit from. As a person who this year is legally and formally going to become a senior citizen, I can say that I certainly would welcome that kind of legislation as I get a little older and perhaps am not able to speak out as strongly as I have in the past.

It would have to recognize that people with profound disabilities particularly do not have typical ways of expressing things. Very often it is only experience that enables

a person with a profound disability to know whether he has liked or enjoyed or disliked something. We cannot expect the same kind of instant response from people with profound disabilities, and we have to recognize that and recognize that is legitimate too.

**Mr J. Wilson:** Thank you very much for your presentation. I think it is one of the best-written presentations we have had. This rivals Mr Rae's Rhodes Scholarship paper. But all kidding aside, I understand, I think, very well where you are coming from because it is so well written. My question really would have been the same as Mr Chiarelli's, because I assume that you have told governments this in the past. You talk about a change of thinking as a result of the Fram committee. Your message clearly is not evident in the section on guardianship. I assume there is a level of frustration. Are there other groups that agree with your philosophy? We have had a lot of groups tell us, I think, particularly in private meetings, that there are a lot of people out there who do not have the bonds of friendship and trust. I think the legislation attempts to pick those people up, while it may very well be acting in a detrimental way to the people you represent, for instance.

**Ms Cole:** But with all due respect, I think it also acts in a detrimental way to those people, because if its only solution is to take away their whole identity and give all their rights to another person, then it is hardly working in their interests either. I think as a society we have a great deal more to do to care about other people and not isolate them and not leave them out there where they do not have anybody. That is a very important thing in our organization. It is something about which we are very conscious.

**Ms Sandys:** The underlying issue in all this, as Audrey has indicated, is not the question of who decides, but of how the decisions get made. It seems to me that the emphasis has to move from the issue of a person's competency to assessing the supports that are available to that particular individual. That holds true for the people we have discussed, people with very severe intellectual disabilities, but it applies equally to all kinds of other people who are vulnerable, whose capacity is being questioned for whatever reason. The issue is that it seems to me that the basic focus of legislation has to be on saying, how do we ensure that people have available to them the supports they need for decisions, just as most of us have the supports we require available?

**Ms Stone:** I think one of the other things that has to be clearly understood is that the government itself has indicated that there are 60,000 people who are vulnerable in the province who would come under the advocacy legislation, except it is not in any position to be able to deal with 60,000 people, so the number is then changed to 30,000. The question in my mind all the way along has been, what happens to those other 30,000? We have some real fears that a great lump of people will be placed under guardianship immediately because they have no one to speak for them and because they cannot verbally say, "I wish to have an advocate." Many of those people can indicate in obscure ways that they have a need for someone to help them to speak, but unless you know that person extremely well,

you cannot expect somebody to go once a month and see a person and understand what he is trying to convey to you. Audrey and I both have sons who very clearly have no verbal skills but in fact make their wants and needs known to us very well. Because we know them well, that becomes very clear, but it is very worrisome knowing that there are 30,000 falling between the cracks of this advocacy legislation and what happens to them and what plan is in place to look at their needs?

**Mr Winninger:** I too found your presentation very readable, and I thank you for that. At the outset I would like to say that I do agree with you that we need to ascertain the least restrictive alternative, the most enabling solution, as you put it, which respects the person's autonomy, right to self-determination and validates that person's decision-making power. On the other hand, a number of times I heard you use the expression, the phrase, "most people did not proceed towards self-sufficiency without some form of interdependence on others." I would ask you first of all whether you agree that there are some people in the province who cannot make these kinds of personal decisions for themselves by themselves.

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**Ms Cole:** Certainly; my son, Nancy's son. There are a great many people. Not as many as we think, of course, but there are a great many people with profound disabilities who cannot do that.

**Mr Winninger:** Just so you understand where I am going, are there people who do not have support systems like you and Nancy?

**Ms Cole:** There presently are some, I suspect; in fact, I know. The ministries of Health and Community and Social Services have already indicated the numbers of such people, in their opinion and from their statistics, who are in various facilities funded by the two ministries.

**Mr Winninger:** Will you agree that these are the kinds of people who need other persons—

**Ms Cole:** In their lives?

**Mr Winninger:** —to make those decisions?

**Ms Cole:** No.

**Ms Sandys:** No. They need other people in their lives. If the issue is that there are some people who are isolated and do not have supports, then the issue is, how do we enable people to have those supports? Giving them a guardian, taking away a right they may not have exercised but has been their right and placing it with somebody else, does not do anything for their life. It does not give them the supports, which is what they required in the first place.

**Mr Winninger:** What you are suggesting, as I hear it, is that these other persons would go far beyond the role of advocates, as proposed in the Advocacy Act, because not only would they be offering rights advice; they would also be making decisions for people. Does it make a difference, I would ask you, whether you call that person a guardian or not?

**Ms Cole:** It makes a distinct difference, because "guardian," by definition, as I think you were told earlier this week—Bills 108 and 109 are about having power over

people. I believe one of the ministry officials told you that on Monday or Tuesday. That is what it is. Having power over people cannot be a solution to self-determination.

**Mr Winninger:** Last, I know you actually at the time endorsed the conclusions of the Fram report. You were not a dissenting voice at that time, but according to your brief, since that time, and you mentioned hindsight, you have changed your mode of thinking on it. You feel you can accord more self-respect and dignity to the individual by avoiding guardianship. But in these cases we have seen—I know you have probably encountered them—of abuse, neglect and exploitation, I would ask you, do you not need someone with the powers of a guardian to deal with that where there are not nurturing family members or friends to do it for a person?

**Ms Sandys:** You are right, our own thinking has evolved on it. The discussions on guardianship have been going on for years and years, and over that period of time our thinking has changed, and that is one of the things we are dealing with now. One of the things we struggled with was to find a situation where giving somebody a guardian would in fact deal with the issue. If somebody is being abused, then that is a criminal act and he or she should not be, and there should be some mandatory reporting of abuse of any human being. People should not be able to be abused by other people, but we do not see the connection in appointing a guardian to deal with abuse. If there is abuse, stop the abuse.

**The Chair:** Ms Sandys, Ms Stone and Ms Cole, on behalf of the committee I would like to thank you for taking the time out to come and give us your presentation this morning.

**Mr Poirier:** Mr Chair, can I just add that in my seven years as a member, at public hearings I have never had such a short document open my eyes so much on attitudes towards the developmentally handicapped. It was excellent.

**Mr Winninger:** Excuse me, Mr Chair. You did acknowledge Ms Carter.

**The Chair:** There are time limits and you used the full time for the caucus.

**Ms Akande:** But if she was acknowledged—

**Ms Carter:** We have not had as much time as the opposition has.

**The Chair:** We are on a tight schedule. Each caucus is allowed four minutes.

**Mr Poirier:** We did not get a chance either.

**The Chair:** We are on a tight schedule. If we are going to get through the presentations that we have to work through in the next three weeks—

**Ms Carter:** But the time should be evenly divided, Mr Chairman.

**The Chair:** Pardon?

**Ms Carter:** I said the time should be evenly divided.

**The Chair:** It is. There were four minutes for each caucus. That is what was left. Thank you very much.



ASSOCIATION OF LOCAL OFFICIAL  
HEALTH AGENCIES (ONTARIO)

**The Chair:** I would like to call forward now the medical officers of health of Ontario. Good morning. Could you please introduce yourselves for the record and then proceed.

**Mr McFadden:** Good morning. My name is Tom McFadden. I am executive director of the Association of Local Official Health Agencies. With me this morning is a member of our executive committee, a member of our board of directors, Dr Colin D'Cunha, who is also the medical officer of health for the city of Scarborough health department.

We want to express our gratitude for being given the opportunity to attend here this morning and present our concerns and our recommendations relative to Bill 109, the act respecting consent to treatment. I am going to ask Dr D'Cunha to present the position of the association. Before I do, I want to describe very briefly the intent and mandate of the association.

ALPHA, as it is commonly known, is comprised of two sections, one representing the elected and appointed board of health members and regional councillors in regional government, as well as a section representing the medical officers of health in this province.

Our aims are, quite simply, to represent the common and consensual interests of public health units and departments in this province. We welcome the opportunity to address politicians and those in positions to make decisions on issues which we consider important to the operation of the public health unit and public health in general in this province. With that brief introduction I will turn this morning over to Dr D'Cunha.

**Dr D'Cunha:** As Mr McFadden has just stated, I am presenting on behalf of the medical officers of health, and consistent with the board direction and resolution adopted by the general membership in the June general body meeting.

Our concerns are specifically addressed around Bill 109, sections 8 and 9, which specify age 16 as the age of consent. Our concerns are driven by the fact that when an age of 16 is specified, people below the age of 16, as I will touch on later on in this presentation, will have to go through a detailed process, such as the whole business of rebuttal, getting consent through other means.

Our concern is more specifically that when you look at teen pregnancy rates in Ontario, as in attachments 2 and 3, Ontario has made major gains, as has Alberta, the two Canadian provinces thus far which do not have an age of consent specified in legislation. What is used is the principle of common law, where somebody is ascertained by the health practitioner in question as being capable or incapable of giving consent. Models may be considered, such as using age 12 or age 14, but there are concerns because a chronological basis of defining the basis to give consent is inappropriate. Clearly individual customization has to happen.

When you look at teen pregnancy rates in Ontario, they have been coming down since 1977. The statistics you have in attachments 2 and 3 are those collated by the Ontario Ministry of Health. Our concern is that should age 16 be mandated, we may end up seeing rates, as is shown

on attachment 5, approximating those of the US or other jurisdictions which have specified age 16.

Most pertinent to note is the experience of Great Britain, where age 16 was written in as the age of consent. The national department of health over there advised medical practitioners that they could treat people under the age of 16. They went that route, and a couple of cases went on appeal all the way to the House of Lords, which is the equivalent of the Supreme Court of Canada.

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The other concern we specifically have is in the area of sexually transmitted diseases, and teens in Ontario are at risk, as attachment 4 points out. The rate per 100,000 of adolescent females in Ontario for the ages 10 to 14 has shown an increase in chlamydia—I must point out that statistics on chlamydia were only collected since the mid-1980s—and for other STDs they have been coming down to a plateau.

The final point, and then I am open to questions, is over the definition of "treatment" that is used in the introductory paragraphs to the bill. Our concern is that the definition of "treatment" is too broad. Where general health teaching and counselling may be interpreted as treatment, if the age of 16 is kept, with this general definition our staff will have to go through a cumbersome process of getting consent for treatment.

**Mr Poirier:** Obviously this thing of age really is important to you. Other medical professionals have come forward. I do not know why there would not be a consensus, if not a unanimous desire, from practitioners to be able to have a second look at that age of consent. It is not hard to put ourselves in your shoes to find out what it means, if it is written down in the law as "16." That chart of yours goes even further, I suppose, to STDs and adolescent females in Ontario aged 10 to 14. That can mean that at 10 we are far away from 16. Even 14 developmentally is a distance, but then this chart—and I see chlamydia just rising like a rocket between 1985 and 1989—convinces me—and I was before, but it adds to the conviction—that it is extremely important that the government remove that reference to "16," because it is obviously evident that if "16" remains written down there, those people, as per your attachment 4, those adolescent females and young men who have other STDs will shy away, if nothing else, or the practitioner will shy away from being able to give them the type of treatment they need, especially in the circumstances where there are no symptoms. There has to be communication.

Obviously I am sure you would strongly support the elimination of that reference to "16," even though we did not have much of a chance to go through your documents. But if your feelings are identical to the ones we have heard so far and expect to hear almost on a continuous basis and with a consensus, if not a unanimous decision, could we hear you confirm that?

**Dr D'Cunha:** It is fair to say we have spoken with the Ontario Medical Association and we understand it is putting forward a similar position to remove the reference to a specific age. We also had meetings with the Ontario Ministry of Health, lawyers from the legal branch, in September,

on the basis of which this brief was subsequently developed. Our concern is defining an age, because chronologically it is impossible to say someone is capable of giving consent or not and it is impossible to legislate sexual activity at any given age.

**Mr Poirier:** Exactly. We know how through time and humanity people have tried to ban certain things, but it just does not work. We might as well work along with how society works and try to best get to the young people and the medical people, to help them together. The way the law is currently written will hinder that. With that in mind, I again invite the government members to take this extremely important point back to the minister so that amendments can be brought forward to eliminate that.

**Mr Chiarelli:** I have a question for legislative counsel, for the assistance of the committee and also for the presenters. To what extent was that age arbitrary, and if it was not arbitrary, what were the factors that went into setting that age? Second, is there anything in the common law which points to a general consensus of age on this particular issue?

**Mr Wessinger:** I probably should refer this to counsel, but before I do so, I think we should indicate that it has been indicated by the minister that this is one of the areas about which we are interested in hearing from groups with respect to the whole question of age.

**Mr Chiarelli:** I am interested in hearing counsel.

**Mr Wessinger:** I will ask counsel to reply.

**Ms Bentivegna:** On your first question about the common law, there does not seem to be a consensus. As to the cases that there are with reference to age and young people, some older cases dealt with 18- and 19-year-olds when the age of majority was 21. The courts found that at 18 and 19—it was cases of surgery—they were capable of consenting to treatment. More recently there have been a couple of cases dealing with young women and abortion. For example, a court case in Alberta said that a 15-year-old young girl had the right to make that decision, even without the parents' interference in the decision. There have not been that many cases, so I do not think one can say there is a consensus.

As to how the age of 16 was arrived at, it was looked at to see at what age a young person was more independent or more likely to be living on his or her own. It was felt that 16 would be an age that would be suitable because that is the age a person leaves school. For the presumption of capacity under the Substitute Decisions Act it was 16 and over. This was a way to dovetail in that other legislation. Under 16, it does recognize that there is capacity but that it would be decided on a case-by-case basis where the young person wanted to make the decision. If a young person did not want to make the decision, then there was no problem to be dealt with.

**Mr Curling:** In section 9, would you say that the doctors—as you pointed out in your presentation—find themselves between a rock and a hard place: that they would like to give treatment and may be restricted because of the law, so therefore in their own standards they are unable to give that kind of treatment? Could they be

charged under their association for not giving proper treatment and yet the law restricts them?

**Dr D'Cunha:** That is certainly a valid point, Mr Curling. The concern most of us have is if you set in place a bureaucratic system of referral to an advocate, it makes the assumption first and foremost that an advocate is available, is capable of applying his or her mind to the individual circumstances that counsel has just alluded to and of coming up with a prompt decision. The practical reality is that when you have a 14-year-old, for example, be it in a health department clinic or in a private physician's office, by the time you get the advocate in the process it is going to be a couple of hours and I would be very surprised to see a 14- or 15-year-old hang around there while you go through this detailed bureaucratic process. I say this as a bureaucrat working for municipal government.

**Mr Sterling:** With regard to your third recommendation on page 2, that the definition of "treatment" be worded in such a way as to exclude the provision of information or general health teaching, I assume you are concerned that you are going to need consent to tell people what is good for them or what is not good for them as health care practitioners.

**Dr D'Cunha:** That is correct. For example, public health nurses who work in public health units on an ongoing basis, be it in the family planning clinic setting, be it in an STD clinic setting or be it in the schools or in the community, end up in a one-to-one encounter now and again with, say, a 14-year-old. To get into health teaching they would be required to go through this detailed bureaucratic process of getting consent to do simple health teaching.

**Mr Sterling:** You are talking about Bill 109. I would like some comment as to whether or not the interpretation is correct or not.

**Mr Wessinger:** I think I will ask counsel again. This is with respect to the matter of educational matters—

**Mr Sterling:** Yes.

**Mr Wessinger:** —as distinct from the matter of screening tests, which I think was raised the other day. There has to be a distinction between the two, so just relating to education only.

**Ms Bentivegna:** If one reads the definition of "treatment," if one looks at the word "preventive," the purpose of the health information or the education is to prevent, let's say down the road, health problems, so in that way it might be caught by the definition. It is a possible interpretation in looking at the definition because there is "preventive" in the definition; anything done for a preventive purpose that is health-related.

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**Mr Sterling:** Can someone tell me what it is the intent of the ministry to catch in the preventive area? Is it a physical treatment that is the concern?

**Ms Bentivegna:** You would want to cover any type of treatment that was being proposed to a person, whether it was to prevent a certain condition or whether it was to alleviate a condition. You want to get at both, let's say if you need a certain type of procedure to prevent your condition



from getting worse. It is just trying to define what a health care service is as broadly as possible.

**Mr Sterling:** Is there any attempt by the ministry to vet the advice an incompetent person is getting from a health care practitioner?

**Ms Bentivegna:** No. The intent is that where there is a decision needed from the person, that he or she wants a service or not, what we are trying to aim at is that at that point if a person is incapable of making that decision for himself or herself, someone else does it on his or her behalf.

**Mr Sterling:** So it is only if it is leading to a treatment, either a pill or a—

**Ms Bentivegna:** It could be something as basic as an examination, if the person, let's say, does not want to go, or if the person does not understand what the examination is for. Then it could lead later to whatever is proposed for that condition.

On health education, I guess because what we are dealing with in public health is more children under 16 or younger children in schools, those kinds of programs, it was not really intended because there is not really a practitioner-patient relationship. It is more that there is a group. But yet I think there is some concern from some parents that they want to know what their children are being educated on or what they are being told in the health care field. They might want to consent to or not consent, so there are two different issues there.

**Dr D'Cunha:** I just want to make an observation. A simple classroom demonstration of, "Use a condom to prevent sexually transmitted diseases and pregnancies," would be caught by this definition and we would have to go through a detailed process of getting consent, be it the school teacher or health professional who makes that presentation. That is how broad the definition is.

**Mr J. Wilson:** I have a technical question. Let's see if I am reading your graphs properly. If I take attachment 2, adolescent pregnancies in Ontario, 15 to 19 years, the way I read that graph is that the number of abortions in 1989 is twice the number of live and still births. That would read to me that there are about 14,000 abortions in 1989 and about 7,000 live and still births.

**Dr D'Cunha:** That would be correct. These are all from the provincial Ministry of Health's database. We have not made these up.

**Mr J. Wilson:** It is amazing. I asked my two colleagues here and I think we find the numbers a little astounding and unfortunate, to say the least.

**Mr Wessinger:** I would like to follow up on this whole question of age. As you know, under that act if a child refuses to consent to treatment there is a requirement that an advocate come in and advise him or her as to his or her rights. Do you have any recommendation with respect to an age cutoff with respect to that advice to a young person?

**Dr D'Cunha:** In general, from what I know from having studied medicine, it is difficult to put a chronological definition on when somebody is competent.

**Mr Wessinger:** I agree with you.

**Dr D'Cunha:** You have to keep flexibility. It is our belief that common law allows you to keep that flexibility to allow that individual determination.

**Mr Wessinger:** Let's assume the existing laws are in effect, or suppose the law is changed and there is no age aspect. We will give two examples. A 14 year old says to the medical practitioner, "I don't want the treatment." The medical practitioner then under the law as it sits would be compelled to call in an advocate. Then you could have a child, just to give you a difference, aged 10 who makes the same statement. In your opinion, should an advocate be called in for both the 10-year-old and the 14-year-old? If it was a four-year-old you would obviously say no, an advocate should not be called in for a four-year-old or a six-year-old.

**Dr D'Cunha:** If the 10-year-old has otherwise shown understanding of competence and if one is willing in a court of law to accept the testimony of the 10-year-old as being such, then I think, in any case, you should have some system of an advocate to look at the issue, and for this exceptional circumstance, but you do not legislate it in with an age cutoff.

I see what you are getting at. The bill is generally well intentioned to allow for these roadblocks to be dealt with. Where you have a situation where somebody clearly needs treatment, and in this individual circumstance you have to examine whether the individual has fully understood the implications or not, we have no qualms with that. Our qualms are specifically around the specific age because then you have set in place a bureaucratic motion.

**Mr Wessinger:** To follow up on that, if there is no age aspect, you as a physician could in some circumstances determine that a 10-year-old would have the capacity to consent to certain types of treatment. Would that be fair to say?

**Dr D'Cunha:** That would be correct, but in this grey area it is fair to say that most physicians in this province would also speak to the parents. You may be able to quote the exception rather the rule—I am not going to put out a number deliberately—but I think I can count on my fingers where you will have a variance of viewpoint or will not be able to solve that situation, given a few days or a few hours, depending on the situation at hand.

**The Chair:** Any further questions or comments? Dr D'Cunha and Mr McFadden, on behalf of this committee I would like to thank you for taking the time out of your busy schedules to appear here this morning.

FACULTY OF MEDICINE,  
UNIVERSITY OF TORONTO

**The Chair:** I would like to call forward the next presenter, Dr Fred Lowy. Would you please introduce yourself for the record and then proceed.

**Dr Lowy:** My name is Frederick Lowy. I am the director of the Centre for Bioethics and a professor in the department of psychiatry at the University of Toronto. I was dean of medicine at the University of Toronto from 1980 to 1987. My MD degree is from McGill University in 1959. I am a fellow of the Royal College of Physicians and Surgeons

of Canada. In addition to my university responsibilities, I practise psychiatry at the Toronto General division of the Toronto Hospital. I am a member of the National Council for Bioethics and Human Research, a national body, and of the ethics committees of both the Canadian Medical Association and the Royal College of Physicians and Surgeons.

My presentation today is on behalf of the faculty of medicine of the University of Toronto. I will make the following recommendations: (1) that section 10 of Bill 109 should be reconsidered, as well as related sections of Bill 74; (2) that paragraph 1 of section 15 of Bill 109 should be dropped altogether, or in the alternative should be drastically revised; (3) that section 22 of Bill 109 requires clarification. With your permission, I would like to speak to those points.

In general, the legislation under consideration in our view is important, timely and constructive. It deserves strong support inasmuch as it empowers vulnerable persons, provides legal authority for substitute decision-makers and for advance directives for health care, and provides a non-judicial mechanism for conflict resolution in the Consent and Capacity Review Board.

Unfortunately, in our view these bills as drafted contain serious shortcomings. These shortcomings are of such magnitude that unless they are corrected there is a risk that the legislation, which is so well intended, may do more harm than good. Therefore, we strongly urge that a few important changes be made so that this valuable legislation can command the enthusiastic support it will need from all persons involved in our health care system.

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The problems, as we see them: first, Bill 74 and Bill 109, section 10: We have serious concern regarding some assumptions that seem to underlie the proposed legislation. Whether it is intended or not, there would appear to be an underlying assumption that as a rule, the rights of vulnerable, incapable persons are best protected not by their families or health professionals but by special advocacy services provided by strangers to the patients. The untested implication of the mandatory advocacy requirement is that the majority of family members, nurses and physicians are not to be trusted to advocate patients' best interests.

I would like to stress that advocacy as a process to protect the rights of vulnerable persons is not in dispute. The autonomy and rights of all persons must be respected and protected, including of course those who because of incapacity are not able to refuse or consent to treatment themselves. In other words, we have absolutely no quarrel with the process or the need for it.

What is at issue is the mandatory, and I stress mandatory, advocacy for all incompetent persons who come or are brought to health care practitioners and facilities. Specifically we are concerned that the need for mandatory advocacy has not been established, that the legislation as drafted will require an extensive and intrusive new bureaucracy in health care, that necessary treatments will sometimes be delayed, that non-productive paperwork will deflect nurses, physicians and others from direct service to sick persons, and that unnecessary and perhaps substantial costs will be added to an already strained health care budget.

These points are discussed more extensively in a paper written by my colleagues Sujit Choudhry and Peter Singer, entitled "Ontario's Proposed New Laws Regarding Consent to Treatment," which will shortly be published in the Canadian Medical Association Journal. I believe Dr Singer included this paper in the material that accompanied his presentation to you on Monday.

It is our strong recommendation that Bill 74, the Advocacy Act, and section 10 of Bill 109 be reconsidered. As Dr Singer suggested on February 10, it would seem more reasonable in light of the above concerns to provide advocacy services to all persons who request them. As well, a carefully controlled and evaluated trial of mandatory advocacy for persons incapable of refusing or consenting to treatment might well be justified in a small designated area. However, expansion of such services to all such patients in Ontario can only be justified if such a trial confirms a need for these services and demonstrates that they advance rather than retard the welfare of the persons concerned.

I would like to turn to Bill 109, paragraph 1 of section 15, and related subsections of Bill 108, namely, subsections 47(6) and 56(5). These subsections as presently drafted pose a potential threat to important and responsible research in Ontario to the detriment of some of the very groups in our society whose interests the legislation is intended to protect.

Paragraph 1 of section 15 of Bill 109 is confusing and ambiguous as written. It is not clear whether its intent is to indicate that the bill does not deal with medical research involving incapable subjects, that is, leaving the law regarding such research unchanged, or whether its intent is to forbid procedures whose primary purpose is research. There is a world of difference between the two.

The Minister of Health, the Honourable Frances Lankin, has been quoted to the effect that the legislation we are considering today is not intended to deal with medical research and that legislation will be introduced in the future to deal specifically with research. If this is indeed the government's intent, may we conclude that paragraph 1 of section 15 is intended simply as a disclaimer to indicate that Bill 109 in no way affects research? If this is so, it would seem advisable to either make this perfectly clear, which it is not right now, or even better, to omit paragraph 1 of section 15 altogether.

If this is not done, if the legislation is passed as written, and if that clause is interpreted as prohibiting research involving incompetent persons, the effect could be most unfortunate. Progress in, for example, anaesthesia, geriatrics, neurology, neurosurgery, paediatrics and psychiatry, as in all other fields of medicine depends on research which at times must involve persons who suffer from the diseases for which treatment is sought. It is neither scientifically valid nor ethically acceptable to apply to sick persons treatments that have not been adequately investigated. For example, when a potential treatment for advanced Alzheimer's disease or dementia due to AIDS or certain childhood disorders reaches the stage of development where clinical application seems reasonable, it is still necessary to



test this proposed treatment in patients who suffer from the condition we are talking about.

In my examples, these patients would not be competent to consent to be research subjects in a controlled randomized clinical trial. In most jurisdictions throughout the world, following accepted international codes that govern ethical medical research, incompetent persons who are unable to give consent themselves may participate as subjects even in non-therapeutic research under certain rigorous conditions that include, of course, the consent of a legal substitute decision-maker.

You may be interested to know that the Law Reform Commission of Canada, in its 1989 paper entitled *Biomedical Experimentation Involving Human Subjects*, agreed that a total ban on non-therapeutic experimentation involving children and mentally impaired persons should be rejected, as in fact it is throughout the world, pretty well. The Law Reform Commission of Canada's recommendation 4, on page 42 of its document, reads as follows:

"The commission recommends that the legality of non-therapeutic biomedical experimentation involving children should be recognized in a general federal statute on experimentation, provided that all the following conditions are met:

"(a) the research is of major scientific importance and it is not possible to properly conduct it using adult subjects"—in this case they are talking about children—"capable of giving consent;

"(b) the research is in close, direct relation to infantile diseases or pathologies";—that is to say, the research deals with problems that involve children.

"(c) the experiment does not involve any serious risks for the child;

"(d) the consent of a person having parental authority and of an independent third party...is obtained; and

"(e) where possible, the consent of the child should be obtained. Moreover, whatever the child's age, his refusal should always be respected."

They go on, in recommendation 5, with almost identical wording to refer to research involving mentally deficient subjects. By logical extension, other persons incapable of giving consent themselves who suffer from neurosurgical, psychiatric or other disabilities should, under the same rigorous conditions, be permitted to participate as research subjects.

I should point out that what the law reform commission recommends for Canada is in fact already the law in a great many countries in the world. It is also important to stress that the National Council for Bioethics in Human Research and the various university and hospital research ethics committees throughout Ontario have as their major objectives the protection of the rights and interests of human research subjects. I know of no evidence whatever that they are failing in this task and that legislation such as that proposed is required.

If Bill 109, paragraph 1 of section 15, and Bill 108, section 47, were interpreted to mean that no non-therapeutic research can be conducted on persons who at the time are not capable of giving consent and if they did not previously specifically authorize participation in a particular research

project, the effect would be to make Ontario children, for example, or persons with AIDS dementia or persons with Alzheimer's disease and a host of other conditions, therapeutic orphans.

One of two things could happen. You could either say that no research can be done on such people anywhere in the world, in which case of course there would be no progress in those conditions, or alternatively, we would be in the ethically untenable position of using in Ontario the products of research conducted elsewhere which would have been illegal in Ontario. Ontario clinical scientists working in these areas would also no longer be able to do so. Successful scientific teams assembled with great difficulty at internationally respected universities and hospital research institutes—for example, the Hospital for Sick Children right here—would be broken up. Our patients, our institutions and our reputation in Ontario would suffer.

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I need hardly remind you that nowadays participation in research projects is by no means always regarded as a burden. For example, advocates of persons who are HIV positive or who have AIDS itself have successfully argued for easier access to research programs where they would have at least a chance to benefit from drugs or procedures that might turn out to be beneficial. If they would have gladly consented to participate in such studies while competent, why should their right to do so disappear if they should, because of progressive illness, become incompetent?

Similarly, let's consider the reason for legalizing advance directives for health care in the first place, which this legislation would so admirably do. The purpose is to empower people, to advance their autonomy, to make it possible for their wishes and values to be respected even after they are no longer competent to insist on this themselves. Proxy directives, such as power of attorney for personal care, permit substitute decision-makers who know the person's values and wishes to authorize procedures to which he or she would have likely consented if competent. Should not a socially responsible person who, while competent, would likely have agreed to be a research subject, have the right by proxy to participate in rigorously controlled socially responsible research if he or she becomes incompetent to give personal consent?

What is the solution? A very simple solution, we think: We recommend that paragraph 1 of section 15 of Bill 109 be omitted altogether. Further, we recommend that Bill 108, subsections 47(6) and 56(5) be carefully reviewed.

I would like to turn briefly to Bill 109, section 22. The problem with this section lies in the choice of the words employed and how these may be interpreted. Section 22 permits emergency treatment to incapable persons if they are "likely to suffer serious bodily harm within 12 hours if the treatment is not administered promptly." I would like to emphasize "likely," "serious," and "12."

How likely is "likely"? If it is 40% or 30%, should treatment be withheld, or does "likely" mean 50% or more? What is "likely"? Is there not a danger of undesirable undertreatment as well as undesirable overtreatment, against which this clause would appear to be directed?

What about the person who is in severe distress, for example in pain or in the throes of a panic attack or very short of breath who is nevertheless not "likely" to suffer "serious" harm? Should that person be required to suffer while efforts are made to find someone who can give substitute consent, when comfort-producing treatment is ready at hand? Clearly, in the interests of compassionate care of persons who are incapable of giving consent, the definition of emergency treatment should be revised to make these desirable treatments possible.

In conclusion, in our view the legislation under consideration is laudable in many respects. However, we believe it would be greatly improved if paragraph 1 of section 15 of Bill 109 were omitted and if Bill 74 and section 10 of Bill 109 and section 22 of Bill 109 were carefully reviewed. This would ensure that the intent of the legislation, the empowerment and welfare of vulnerable persons in Ontario, is not subverted, as we believe could be the case were these bills to become law as presently drafted.

We would like to assure the Minister of Health of our readiness to participate in discussions leading to the proposed future legislation dealing with medical research.

On behalf of the faculty of medicine at the University of Toronto, I would like to thank you for the opportunity to make this presentation.

**Mr Chiarelli:** Dr Lowy, I appreciated your presentation. It was very thoughtful and technical and I am sure it will be helpful to the committee. You indicated you thought the legislation and the thrust of the legislation were laudable. However, when you call into question section 10 and section 22 I think you are going right to the heart of the legislation, which is what I want to do with my question. I am particularly concerned about how this legislation would address the situation of schizophrenics, and the question of medication and what happens when a schizophrenic feels good after having received the medication and starts going off the medication and then the paranoia starts coming back again. How should a medical practitioner deal with the situation of the returning psychosis of a schizophrenic going off medication?

**Dr Lowy:** I think that is a very important question. It goes to the heart of the balance that needs to be struck between the rights of the individual in a legalistic sense and the welfare of that person, to say nothing of the welfare of society. The legislation as it is written does indeed protect the legal rights of the individual but it fails to protect the welfare of that person, and the welfare of the family and of society at large.

There is no doubt that we know enough now about, for example, schizophrenia, or for that matter the manic phase of bipolar affective disorder, that we can predict with a fairly high degree of certainty that most persons suffering from these disorders will have their symptoms controlled by medication and other treatments currently available. We also know that in a very high proportion of cases, if left untreated, their psychosis will return full blown with usually unfortunate consequences for themselves, for their families and sometimes even for other persons.

I think ideally a medical practitioner who understands the needs of the patient—this person—and also understands the rights of that person will be able to make a determination whether or not that person is capable of giving consent to treatment. If the person is capable of giving consent, then clearly that person's decision is final once the alternatives are carefully explained to the person. If the individual is not capable of giving consent by dint of the illness, then I believe the welfare of the person and of others requires that treatment be facilitated rather than blocked. I am afraid the present legislation could in some instances seriously delay necessary treatment.

**Mr J. Wilson:** Thank you, Dr Lowy, for appearing before us and interrupting your busy schedule. I know you have appeared at committees in the past. You are a good citizen in terms of keeping us on our toes here at Queen's Park, and particularly at keeping government on its toes, by participating in these committee hearings.

You mention the mandatory advocacy for all persons deemed to be incapable. My question is to you but it is also to the parliamentary assistants. Is there a model in place somewhere now in the world for this type of mandatory advocacy for all persons deemed to be incompetent? I am worried particularly about the hospital setting, in the emergency room setting. Is that in place somewhere now and is it operating?

**Dr Lowy:** I am afraid I cannot answer the question. I am not aware of any other jurisdiction where this is in place.

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**Mr J. Wilson:** Mr Chair, would the parliamentary assistant like to try that one?

**The Chair:** Mr Malkowski?

**Mr Malkowski:** I would like to refer this to the parliamentary assistant to the Minister of Health.

**Mr Wessinger:** Yes, we do have this system, patient advocacy, in effect under the Mental Health Act right now in Ontario.

**Mr J. Wilson:** Well, it is obviously not the same system or we would not have people here complaining about the mandatory advocacy.

**Mr Wessinger:** It is basically the same system. We are extending it.

**Mr J. Wilson:** Do you understand this bill to be the system that is in effect now in emergency rooms? I do not recall going into an emergency room and being told I could have an advocate.

**Dr Lowy:** I think there are elements of the mental health legislation that are carried over to this proposed legislation, but I would differ; I do not think they are the same. In any event, they only cover a portion of the population, namely, those who fit under the Mental Health Act.

**Mr Wessinger:** I think it should be clarified. I am referring to the mental health field only, not to the general health field, with respect to the question.

**Mr J. Wilson:** My question was more advocacy in terms of someone deemed incompetent who is not necessarily a



psychiatric patient. We have had concerns from the medical profession, and again from Dr Lowy, indicating the bureaucratic and paperwork burden and the delay of emergency treatment that this could cause. Is there anything that goes to this extent, covering all cases of incompetency?

**Mr Wessinger:** I guess you are asking if there are any other jurisdictions that have used this model. I think not.

**Mr J. Wilson:** Okay, well that is all I am asking.

**Mr Wessinger:** This is a new model.

Dr Lowy, for my own information, I would like to know if there is research being carried out in Ontario at the present time using incapable people and young children as subjects.

**Dr Lowy:** Yes, indeed.

**Mr Wessinger:** Could you give some examples of what type of research is being done?

**Dr Lowy:** I think there are literally dozens, if not hundreds, of projects presently being done at the Hospital for Sick Children and at the Children's Hospital of Eastern Ontario, that involve children whose participation in research is consented to by parents or guardians. Research is taking place at the Clarke Institute of Psychiatry, at our provincial psychiatric hospitals, in the wards of our general hospitals, in the wards of our neurological and neuro-surgical units, etc. All these projects have been approved by the research ethics committees of those institutions, and in many instances as well by the human investigation committees of the university concerned. That is a double committee—both the hospital and the university committee have passed on them.

I guess the dividing line between what is contentious and what is not contentious is non-therapeutic versus therapeutic research, if I may take a moment to explain the difference.

First of all let me say that medicine progresses in an uneven fashion. What we believe is best today can be superseded by what may be discovered tomorrow. But how does something that is discovered get translated into clinical practice? Nowadays, in contrast to what used to be, there is a requirement that any new treatment be well investigated in the laboratories using research animals, and then using populations of healthy volunteers in small groups, then selected groups of persons who are afflicted by the condition you are trying to treat. Only if all these steps are satisfactory would a treatment then be introduced on a general basis for people with that condition.

Each of the steps is important, including the last one. Even with treatments that seem to work very well in animals and that are proved to be safe because healthy volunteers have undergone these procedures, you cannot really tell if they are going to help the people with the condition involved unless people with that condition try it.

You can do it in a sense of using compassionate innovative treatment where you think someone may be helped by it. You are not sure, but the treatment is available, has been reported as promising in some other country, and you want to try it. Right now we have mechanisms for permitting that, but that is really not good enough, because to be

certain that a proposed new treatment is effective, you really have to subject it to proper scientific study.

That includes taking precautions against the possibility of bias on the part of the investigator; that is, investigators like to prove what they set out to prove. You want to make sure that does not happen. You want to make sure that people who get the treatment are compared appropriately with people in very similar circumstances who do not have the treatment to see if the treatment in fact is better etc. A whole system of randomized clinical trials has developed over the last 30 years and been accepted worldwide. The only way you can then be sure that what you are proposing to do that is new is any good and safe is to try it in a controlled fashion; namely, research.

Curiously, whereas we now have the authority, without asking anybody, to try something new which may help the individual patient physicians are treating, we do not have the authority to do this in an organized, controlled fashion. I think that is correct, by the way, because any research project has to be approved by an ethics review board. That is entirely proper. If the research proposed is likely to be of benefit to the individual subject, we call it therapeutic research. There is no certainty that it is going to help, but at least there is a chance, and that is why you give it to this particular population. You have a control group that does not get it at this point until you are sure the treatment will work.

There is also research where you are not even sure it is likely to help, although there is some reason to believe it will. It is non-therapeutic. You cannot guarantee the individual subjects are going to benefit, although the class of people with that condition might; for example, a treatment that requires testing on persons with Alzheimer's disease. These people may be in their 70s or 80s. They themselves may have had so much brain damage from their disease that there is very little likelihood they personally would benefit, but the group of people with Alzheimer's disease might benefit. The only way that group ever will benefit is if new treatments are found. Whereas there is no problem whatsoever, as far as I know, with a properly executed and approved therapeutic research, there remains doubt whether non-therapeutic research that does not benefit that particular individual should be permitted or not. In the law reform commission recommendation I read into the record the conclusion is quite clear. They think it should be permitted under certain rigorous conditions. The legislation, as proposed here, would not permit that.

**The Chair:** We have to move along now.

**Mr Wessinger:** Can I just get some clarification from counsel with respect to the question of section 15, whether counsel's opinion is that it in any way restricts research? I think that would be useful for the committee.

**Ms Bentivegna:** No. Section 15 says, "Nothing in this Act authorizes a health practitioner to perform any of the following procedures on a person who is incapable with respect to the procedure," the first one being, "A procedure whose primary purpose is research." In no way is it to prohibit because there is further study being done in this area. Therefore, that is why we used the words does not authorize, because we did not want a substitute for an



incapable person to point to Bill 109, the Consent to Treatment Act, which is more for therapeutic treatment, to say he was giving consent for research. That authority has to come from elsewhere, on the same basis as it is being done now.

**Dr Lowy:** I am reassured to hear this legal opinion, that this would not prohibit the kind of research I am talking about. But I suggest the language could be interpreted otherwise. Since it says that it does not authorize, it could be interpreted as prohibiting, and if the intent is that it simply disclaims that this bill in any way deals with research, then perhaps a clarification of that type would be useful, or leave out that section altogether.

I also point out that the other two clauses of that section deal with activities that are actually illegal at the moment. By association, if you put research in the same section as two illegal paragraphs, surely somebody is going to interpret that as meaning that paragraph 1 is just as illegal as paragraphs 2 and 3, by association. That may not be intended, but I suspect somebody is going to interpret it that way, with dire consequences.

**The Chair:** Dr Lowy, on behalf of the committee I would like to thank you for giving your presentation today.

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DAN FERGUSON

**The Chair:** I would like to call forward the next presenter, Dan Ferguson. Good morning. Could you please identify yourself for the record.

**Mr Ferguson:** I am here today to speak only to the provisions of Bill 109. The first thing that occurred to me before I came, when I looked at your agenda, was the large number of prestigious groups and individuals appearing here, Dr Lowy being an example. I cannot quickly tell you who I am or where I come from, as he can, by reference to a position, so I would like to take a couple of minutes to answer those questions. I am sure some of you are already wondering who Dan Ferguson is, where he comes from, what his biases are, why he is here and what he knows about the subject.

First of all, I am here as an individual. I represent no one but myself. In terms of where I come from, I would like to tell you both my professional and personal involvement in this area. I am a member of a large King Street and Bay Street Toronto law firm. I hope you will not stop listening just because I have told you that. I have practised there for 20 years. Most of my practice in this area involves defending public hospitals in malpractice suits. Often, as you know, consent or lack of it is an issue. I also, whoever I am representing, give legal advice to doctors, nurses, children's mental health clinic organizations, the Ontario Cancer Treatment and Research Foundation and a number of walk-in clinics.

For many years I defended actions against all the provincial psychiatric hospitals. I have also, on a number of occasions, represented the Ministry of Health in lawsuits against the ministry. On occasion I receive calls from ministry officials asking my advice and on many occasions I am in the position of receiving calls at any time of the day or

night from hospitals and care givers who ask questions like the ones Dr Lowy was putting to you. I suppose you might think at the outset that I would have an institutional bias, but I should also tell you that I represent patients who want to sue doctors and nurses in hospitals—not the same ones I defend.

As a private citizen, I would also like to tell you that all my life I have had a tendency to favour the underdog. As a quick example which would be meaningful to some of you, in my neighbourhood a few years ago there was a terrible controversy about a group home for ex-convicts. Most of my neighbours were involved in opposing it, and very successfully so. In response, after a lot of thought and a lot of talking, I set up a neighbourhood committee. It took us four years, but what we did was open that same project which had previously been opposed. That is apt here, I think, because one of the members of the committee I put together was Frances Lankin.

Closer to this area—I think all of you are in a similar position, to more or less the same extent—I have been a patient. I have an aunt who is very elderly who can sing songs from the 1920s but does not know where she is or why she is there. I have two grown children whom, like you, I have escorted at all hours of the day and night to emergency departments and faced the kinds of problems some of the people are going to address to you. I have parents in their mid-80s who have the usual panoply of health problems. Sometimes they have difficulty understanding and getting attention, and sometimes not.

I have a cousin who is a schizophrenic. I have taken her in the middle of the night, kicking and screaming, to hospitals. I have had the experience of phoning the police who would not come, the ambulance that would not take her, and going to the hospital that did not want to treat. Sometimes I have taken another friend to the hospital and have thought that what they wanted to do was much too aggressive. I have seen both sides of that. I also have in my extended family young infants who are now growing older who have been incapable from birth because of congenital or who knows what kinds of problems.

What do I know about the subject? I guess I know a little about it, because of what I have told you already about my work and my personal experiences, but without going into it, I think I can also honestly tell you that I have written and published as many papers and given as many speeches as any other lawyer in the province on this subject. At one point I also had the privilege of serving on the ministry consultation committee that preceded the presentation of the bill you are looking at.

The next question I suggested you probably had was, why is he here? Last week somebody asked me that. I was at a meeting at the Hospital for Sick Children discussing this bill, actually, and somebody at one point turned to me and said, "Why do you want to go anyway?" I was not sure whether I should infer from her comment that she thought that I had a bias, a vested interest, that it was worth money to me, or whether she thought that there was no point because the juggernaut of the legislative process was going to pass the thing anyway. I was not sure what to make of that, but let me tell you why I did come here.



I came here for two reasons. First, I came here because I care about this legislation; I care about the issue. Like you, I would like to see this done right. We cannot do it right the first time, but I would like to see it done right before we put it into force.

The second reason I am here is that, perhaps unlike the colleague who asked me that question this week, I have a great faith that laypeople like you—that is, not doctors, lawyers or bureaucratic gurus—can decide whether the car will work without knowing all the mechanisms that are inside it. I think you will be persuaded by the end of your hearings that this bill will not do what you want it to, that it will not work the way it is supposed to and that it needs, as Dr Lowy said, some more thought.

I think you will also recognize—it may have already occurred to you because of the people who have come here—that this is not a partisan subject. I was pleased, I might say, that the tenor of your meeting, which I watched for only an hour beforehand, was much different from the last time I came to this building, when the issue was only partisan, as far as I could tell. But this is not a partisan subject. There ought to be nothing to do with politics or indeed, except in rare cases, any partisan issue because of the side of the fence the person is on. I think we are all looking for something that will work.

While my friend earlier in the week may have thought it is against all odds that I come here to persuade you that this will not work, I guess I can also say, only half-jokingly, that when a number of you ran in the last election I will bet a lot of friends told you it was against all odds that you were doing that, so I take hope.

What do I want to say about Bill 109? I am concerned because, as I understand it, you have six bills on your agenda. They are lengthy, complex and technical pieces. Frankly, I think you have too much on your agenda. I am concerned that if I go into the line-by-line issues I will leave you with nothing but the recollection of some guy sitting here going through the line-by-line issues. I have filed something in writing in which I did go through those issues, but I would prefer today not to talk about that and to leave that to you, if you have time to read it. I would rather speak to you on a more general level.

I want to leave you with some general thoughts. I would like to start, because I know nothing about your preparation, with how the bill works. I have an abiding concern that people in your position only hear people talking about specific shortcomings or strengths but do not have a sense of how it would work. Perhaps I could ask whether the members of the committee have with them Bill 109 so we can look at it.

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**The Chair:** I believe all members have copies of the bill.

**Mr Ferguson:** What I would like to do, to tell you how I think it works and in the process take the opportunity to make some comments on some of its provisions, is just take you through one example. It is not an extreme example, I do not think. It is not a tough case like the under-16-year-

old. It is not a tough case like the dramatic psychosurgery situation.

Let's take an easier one. Let's pretend you are in your constituency office in Peterborough, Ottawa, Hawkesbury or Guelph and you get a phone call from a neighbour who tells you that your Uncle Fred has had an accident. Your Uncle Fred is 90 years old. He lives with his wife and his wife is away. The neighbours call you. Fred likes you. Anyway, you rush to the hospital and you arrive just as the ambulance arrives with Fred and what you learn quickly is that Fred fell in the shower and broke his leg. Indeed, his leg is quite crooked. It is not a matter of it being cracked; it is definitely broken. What I would like to do is follow through what might happen in that scenario, by reference to the provisions of the bill, to see how the bill would work.

First of all, you are at the door of the emergency department. Fred is there, the ambulance attendants are there and maybe the neighbour is there too. I should add to the facts that for a number of years, not quite as bad as my aunt, but to some extent Fred has been confused. Some days he is there; some days he is not. Some days he is in the present, but not to his immediate surroundings. That happens to be the case today. Today Fred is cantankerous. Fred does not want to go into the hospital. Fred wants to go home and watch the Olympics on television. You tell him he has a broken leg and he says: "It's not bad. I want to go home because they're having the downhill skiing in 20 minutes and that's more important to me than fixing my leg."

Let's look at the act. If you look at subsection 19(2), it says that a person who is 16 or more and objects to being admitted to a hospital cannot be admitted unless a guardian appointed under the other bill consents. So you cannot get Uncle Fred in the hospital. I suppose you could argue under section 22 that it is an emergency, but for reasons we do not need to go into but that Dr Lowy hinted about—serious problems within 12 hours and so on—it may not be an emergency. Maybe nothing permanent or serious will happen to Fred if he waits out there in the ambulance for a few hours or a few days.

In any event, because you can obviously amend that, let's assume we get him in the hospital. What do we do next? You meet the young, tired but conscientious and caring emergency physician. What is she supposed to do? What she is supposed to do is start with section 4 of the act. Section 4 says that she may not administer any treatment unless she decides the person is capable and the person consents, which is not our case, or she is of the opinion that the person is incapable and somebody else authorized by this bill does consent.

What she then does, as I understand it, is go to section 9. Section 9 says she must assess Fred's capability by reference to certain prescribed standards and procedures, which we do not have. I take it they are going to be in the regulations. But let's suppose she does that and let's suppose she assesses Fred as not capable of making a decision about fixing his leg.

By way of an aside I would ask you to query whether—whatever the standards and procedures are that may be prescribed; there may be a whole lot of them but



let's assume there is one list—you think one list will be appropriate in deciding this case as opposed to a case involving a kidney transplant, as opposed to a case of psycho-surgery, as opposed to a case where Fred wants to go down and get his prescription changed for his glasses, because if you go to the end of the bill, as you know, this also applies to ophthalmic dispensers and denturists. One of the things that occurs to me is that this list does not really seem apt to those latter situations.

In any event, let's assume this young emergency physician, who is up to date and has read this, has assessed Fred as not capable. What does she do then? She cannot, because of section 4, give any treatment until another person has given consent in accordance with the act. I suppose you could then still go back to the emergency section, but for the same reasons Dr Lowy mentioned, I do not think this is an emergency. Section 22 says it is only an emergency if within 12 hours the person will suffer serious bodily harm. The fact is she says, "You could set this tomorrow or next week; no big difference." Actually what she plans to do is straighten it out and book him for surgery in a couple of days and have somebody come in and take it apart and try to put it together more expertly. But he will not suffer any serious bodily harm. He will hurt for a while, and as Dr Lowy said, you cannot give Fred any medication either because that is treatment.

What does she do? What she does is start through the process of getting substitute consent, so she goes to section 10. Section 10 sets out the initial rules she must follow. First, she must advise Fred that she thinks he is incapable, and second, she must give him a written notice saying he is entitled to meet an advocate and could also, if he wants, go to this board. She must also notify an advocate. I presume she phones one. You will note under subsection 10(2) that an advocate is to come promptly to meet Fred, which is desirable, but in Hawkesbury or Peterborough or Guelph in the middle of the night I do not know where this advocate comes from or how long you have to wait until this person gets there so you can be part of this. I am concerned this may not work.

In any event, under subsection 10(6) it says that she cannot give any treatment until that advocate comes and speaks to Fred and tells him his rights, or you can go to the board, which is not very practical. So she says: "Will you please sit down? The advocate will be here. In the meantime we're going to leave Fred here in the hall, and I'm sorry, I can't give him any painkiller. Maybe you could talk to him about the Olympics."

Let's assume the advocate does come and let's even assume it is promptly. Maybe the advocate is in the hospital. Let's also assume that we are lucky and Fred does not want to go to the board to dispute his incapacity, that he either does not understand what she is telling him or he says: "I don't want to go to any board. I want to stay here in the emergency department and watch the Olympics on the TV."

What does the physician do? The physician goes back to section 4 and says, "All right; I have to find another capable person who is eligible under the bill to be a substitute." What does she do? She, the physician, goes to section 16

and under section 16 there is a list of people in seniority who are entitled to make a decision on behalf of Fred. You will note there are some immediate problems at the beginning of the list because I do not know how you or this physician are to know if these various powers of attorney and so on exist, or if they do exist, what they say. We are told that some day they will be accessible on our health card, but as far as I know that is not the case yet. I am not sure how they sort that out. If you suspect or know there is such a document, I do not know how you find it.

In any event, let's assume we do not get hung up on that, because there is no reason to believe there is such a document. She then goes through this section and looks at subsection 16(2) and it says that she, the health practitioner, must make a reasonable inquiry as to who on this list exists and she must determine, from among those persons, who is entitled to give or refuse consent. You will notice in the next subsection, subsection 16(3), that she must also assess whether that person is, first, over 16, and second, is himself or herself capable. So the doctor must perform an assessment of that person's capability. I do not know whether she has to apply the criteria that are required in section 9 and will come in the regulations, but if they include visual observation and so on, we have a problem if the wife, who we know exists, cannot come down.

In any event, that is what this physician has to do. She looks down to subsection 16(5) and she must determine who is available. I note there is no provision here that she can delegate this task. It says she must do it. I query how many emergency physicians are going to get on the phone and start looking for the relatives and assessing how old they are and what their involvement is. How long will this take?

#### 1150

Meanwhile, Fred is in the hall. Fred's wife is in Florida with another relative. She likes to go to Florida. She enjoys Florida. Fred does not. So she is in Florida. You explain this to the physician. The physician quickly realizes that on this list Fred's spouse is the closest relative, at the top of the list. She is the one she has to find. What if she cannot find the wife in Florida? What if she is out on a two-day jaunt to Disney World? What if she is not sure on the phone if this spouse is capable? This is difficult. You have elderly people and long-distance phone calls. You announce the person is in the hospital. The person is excited. This gets difficult. This is why people phone me; these are the reasons. There are not easy answers.

Let's suppose she sorts all this out and decides, "Yes, I've spoken to the right person," whether it be you, or if it is appropriate, the spouse, and gets instructions. Well, it is not quite that easy. That is not the end. We then go to section 17. Section 17 says that before the spouse, or you perhaps if you are the first person on the list, can give consent, you must make a statement, and section 17 sets out four things you must say. You must say what your relationship is and that you have no reason to believe Fred would object to your doing it. You must say there is nobody higher on the list you know about who should be called in. You must say you have been in personal contact with the person in the preceding 12 months. I query what "personal



contact" is. What if the wife has been in Florida for 13 months? Can she say she is in personal contact because she phones and writes Fred, or is she now excluded? Another phone call to the lawyer.

In any event, we go down to section 18, assuming that the person eligible and available can say all those things. Under section 18 that person, the substitute, now is to be told everything that in the normal course would be told to the patient to make a decision. What does the substitute do? The substitute has to take some steps too. The substitute is supposed to take into account what is in section 14, and section 14 in a very long column sets out the principles which are to guide this person in making a decision. I would like you to read some of them, but I will just mention a couple. The wording of them is instructive.

Paragraph 14(1)1 says that if you, the substitute, know the incapable person has a power of attorney, you have to follow that. I am not sure what happens if you cannot find it.

Paragraph 14(1)2 is interesting to read. It says, "If the person"—that is you—"does not know of any such instructions, he or she shall act in accordance with any wishes applicable to the circumstances that he or she knows the incapable person expressed, orally or in writing, when capable, and believes the incapable person would still act on if capable." Now, the first thing that occurs to me is that maybe you can understand that if it is handed to you, but I do not think the average adult in this province who, I am told, still reads at or below the grade 12 level is going to know what the hell that means. They are not going to understand that.

It goes on. As you can see, it goes on for a long column of things and at the end it sets out an additional four factors that are to be taken into account. This is about three times the length of the Mental Health Act principles, which nobody pays any attention to even now. In any event, this is not a crisis. Imagine if we had a crisis. Imagine if you have a real emergency and you are the substitute or the substitute is some 20-year-old adult trying to deal with his or her child and is handed this, either in this language or in some layman's pamphlet. What is their reaction going to be? Are they going to be offended that you suggest to them that this is the way to decide how to care for their relative, their daughter, their father, or are they just going to be totally confused, or are they going to say: "I don't care about all that. Fix Fred's leg"? It is a hard case.

The only help they can be given is that if they jump to section 28, if they cannot understand what to do or how to make this out, they can go to the board and ask for some direction themselves. As you know, the board has to convene within seven days to give them advice. This trip through the act reminded me of a trip I made this morning. I came up here on the subway. I got off at Queen's Park and I came through the tunnel, and I got lost. I ended up in the wrong building on the wrong floor. I had to get directions. Somebody very helpfully sent me over here. There are a couple of parallels. First, like this bill, the tunnel is too long. Second, the signs are not good enough. People are going to get lost in this.

Probably equally instructive in terms of what you are doing is what I noticed as I walked down that tunnel. As you know, on not one side but both sides, every 12 inches, there is a light fixture from end to end of these tunnels. Every other light on each side is turned off. As I walked along, I had lots of time to think about it. What I thought about was this, which I think is apt. I have no doubt that the design of that tunnel and those lights and their placement and numbers were specified by an expert. I have no doubt that there was a committee of at least one ministry that studied these plans and this lighting need. I have no doubt that it went through a number of channels of approval, including the Management Board, to justify the cost of it. Somebody in retrospect has walked down the tunnel and said: "What the hell have you got all these lights here for? Let's turn half of them off." It is a very apt example, I think, of what can happen when you get skewed off by a bunch of experts saying: "Here are a whole bunch of rules. If you put them all together, this is a perfect system." The layman walks through this tunnel and says: "This doesn't work. Can't we do this better, more simply, with the same result?"

Let me ask you a couple of more questions.

**The Chair:** Would it be possible for you to forgo that and allow us to ask some questions, or would you like to use the full half-hour?

**Mr Ferguson:** I would rather use it because I think that would be less instructive than what I can suggest to you, but I am in your hands.

**The Chair:** Is it at your discretion.

**Mr Chiarelli:** On a point of order, Mr Chairman: Given the fact that this is the last submission before the lunch hour, we might want to extend it for 10 or 15 minutes in order that we can ask some questions.

**The Chair:** Do we have unanimous consent for that?

**Mr Fletcher:** No, I cannot stay.

**The Chair:** No, we do not have unanimous consent. Please proceed.

**Mr Ferguson:** Let me ask you some quick questions without elaborating. Do all patients and all situations require this much bureaucracy? Does this patient require this much protection? Who will tell the doctor what the rules are? Who will tell the patient? This is a provider-driven system. What I mean by that is that the only way the system is going to be triggered is if the health care provider triggers it. No patients are going to arrive at the hospital with the bill. Some physician or care giver is going to have to explain the system and their rights.

What will this cost? I am concerned. I do not have time, but I will leave these with you. I made a number of inquiries to try to determine what this would cost. I filed some of these wonderful freedom of information requests with various ministries. From the Ministry of Health I got a number of pages that were blanked out for the various reasons that they provide in the act. But from another ministry, that of the Attorney General, I got some answers, and what I have given you are some excerpts from those.

What they frankly show—I will leave them with you—is that the public trustee is very concerned about this, judging from his memos. He is being given erroneous or at least unsubstantiated estimates which he says may result in adjustments of his budget from \$6 million to \$48 million, depending on which figures are right. He tells you that he is presently working out of a broom closet—I am sorry; it is a library with one desk and one person—and he queries how he is going to cope with all this if he is given these added responsibilities.

What I also know, since I have asked for and not been given it, is that there seems to be no public information as to how often this system would be triggered or what it would cost, and I frankly do not know if anybody has made the inquiry. Certainly none of my clients has ever been asked, “How often do you have incapable people in these various scenarios which would require this?”

What do we need to do? I suggest we need to simplify the system and boil it down to its essentials. I will not repeat what they are, but at the back of the pile I have given you an instructive letter. It is from a lawyer named Ken Howie. In terms of bias, Ken Howie has the opposite of my bias. He acts only for patients. He sues my clients. Ken Howie and I were both on the consulting committee. He and I agree on the remedy, and in about two pages he has listed what he thinks is required and what I agree with.

If I could say one last thing about the process, there is a widely spread rumour that there are already amendments drafted and awaiting implementation once your hearings are completed. I am concerned about that because I fully expect, from the reaction I have heard, that there will be amendments and I am concerned they may already have been drafted. I am more concerned that the juggernaut of the process I referred to earlier will take effect, and what will happen is that after all these hearings there will be a raft of amendments. The thing will substantially change complexion and shape and length and light, but there will be no more input. You will never know whether the patients, the care givers, the family members, their lawyers, all the hangers-on, think the new car will work.

1200

I would urge you at the end of this process—and the reason I am avoiding the specific amendments—to recognize that this will not work, or at the very least may not

work, that we do not know what it is going to cost, and that you suggest they consider substantial changes to it and then let it go out for distribution and allow people to form representative committees to decide if it will work, and come back to you a second time. I think it is only if you go through that process that you can have any assurance this will work at a reasonable cost and in a reasonable fashion.

**The Chair:** Thank you, Mr Ferguson.

**Mr Chiarelli:** On a point of order, Mr Chairman: I just want to say that we have fixed time frames etc., and I personally find it very offensive that we are not given an extra 10 or 15 minutes to ask this witness questions.

**The Chair:** You are not on a point of order, Mr Chiarelli.

**Mr Chiarelli:** It is a point of order. I am addressing the agenda that you have established, the time frame, and the fact that we are proceeding on a basis with this legislation that is very non-partisan. I am saying that you are testing that by simply refusing 10 or 15 minutes to ask a very good witness some questions.

**The Chair:** The Chair has not refused. We did not have unanimous consent from the committee.

**Mr Chiarelli:** You are also inviting a filibuster on this legislation if we are not able to question witnesses. We want to be non-partisan—

**The Chair:** Excuse me, Mr Chiarelli. Before the witnesses came, they were instructed by the clerk that they had 15 minutes for a presentation and it was suggested it would be appropriate if they allowed some time for questioning from the committee. If they choose to use the full half-hour for their presentation—

**Mr Chiarelli:** If you want to set the rules, you will have to play by the rules.

**The Chair:** Thank you, Mr Chiarelli.

Mr Ferguson, on behalf of the committee I would like to thank you for taking the time out of your busy schedule to be here this morning.

**Mr Ferguson:** I shall not run away if Mr Chiarelli wants to ask me a question in the hall.

**The Chair:** This committee stands recessed until 1:30 this afternoon.

The committee recessed at 1202.



## AFTERNOON SITTING

The committee resumed at 1338.

**The Chair:** I call this meeting back to order.

**Mr Chiarelli:** I am at the present time moving a motion, which I will ask my colleague Mr Poirier to bring up. There are several copies.

**The Chair:** Mr Chiarelli moves that public hearings on Bills 74, 108, 109 and 110 be suspended to permit the government to withdraw the legislation, following which public hearings would continue before the standing committee on administration of justice as "proposed" legislation.

**Mr Chiarelli:** I have some comments to make on that motion. Before these hearings commenced and since they have commenced, there have been very significant representations received, most of which have indicated that it is timely to consider legislation of this type but that in point of fact the legislation itself is very complicated, has very major gaps in it and should be reviewed under circumstances outside the legislative framework, because, as we know, the general legislative process involves the introduction of a bill for first reading, second reading, and at second reading stage there is a vote taken accepting the legislation in principle. It then goes to committee and committees can do various things with the legislation, including having public hearings.

This legislation probably affects more people in a more personal and emotional way than any other legislation I know of in recent history, including the health professionals legislation, which I want to refer to. In the health professionals legislation, Ms Caplan prepared legislation and then went out on a very broad consultation process with draft legislation, rather than having live legislation in the consultation process.

I believe the consultation process is absolutely essential for this type of legislation. As I mentioned, it is very personal in nature. In addition, it is very technical in nature, and I guess the legal implications have a lot of permutations and combinations in terms of interpretation.

I want to point out that in the opening remarks of various ministers, for example, the Minister of Health, Ms Lankin, I pointed out at that time that her printed remarks were replete with, "Maybe this, maybe that," and "We'll have to look at that and we'll have to look at that." I agree with the substance of what she was saying, but I disagree that we should be looking at a live piece of legislation in contemplating those variables to the legislation.

I had no preconceived notion that I would be moving this motion and I am doing it on an impromptu basis with that background, and I am doing it particularly based on some of the submissions we heard this morning, which I want to refer to very briefly.

I think we all know who Dr Lowy is and his background and that he has been, in a very non-partisan way, counsel to various governments, task forces and commissions. I also want to say, in a very non-partisan way, the health professionals legislation, which was dealt with in draft form, was also started with the Conservative govern-

ment. The Liberal government moved it along and the NDP government took it to its conclusion. I understand this particular legislation started consideration under the Conservatives, the Liberals moved it along and now the NDP has it.

There is a general consensus that this type of legislation, this subject matter on this matter—

**Mr Wessenger:** On a point of order, Mr Chairman: I wonder if we could have a ruling about whether this motion is in order. I am just uncertain whether it is a motion that is in order or not and I wonder if the Chair could give consideration to that.

**The Chair:** The motion is in order because the committee is allowed to set its own schedule and what he is asking is for the committee to suspend hearings. He is not asking for the committee to withdraw the legislation; he is asking to suspend hearings so the government can withdraw it and it is in order.

**Mr Chiarelli:** Thank you, Mr Chairman. I do apologize. I know there are people waiting to make submissions. Perhaps we can continue this debate later on, after I make my preliminary remarks, when we are not holding up presenters, but I did want to point out the significance and the source of some of the concerns about the specifics of the legislation. I was commenting on Dr Lowy who indicated in his brief this morning:

"We have serious concern regarding some assumptions that seem to underlie the proposed legislation. Whether intended or not, there would appear to be an underlying assumption that as a rule the rights of vulnerable incapable persons are best protected not by their families or health professionals, but by special advocacy services provided by strangers. The untested implication of the mandatory advocacy requirement is that the majority of family members, nurses and physicians are not to be trusted to advocate patients' best interests."

He goes on to say:

"It is our strong recommendation that the advocacy services bill, Bill 74, and section 10 of Bill 109 be reconsidered.... As well, a carefully controlled and evaluated trial of mandatory advocacy for persons incapable of refusing or consenting to treatment might well be justified in a small designated area. However, expansion of such services to all such patients in Ontario can only be justified if such a trial confirms the need for these services and demonstrates that they advance rather than retard the welfare of the persons concerned."

**Mr Winninger:** On a point of order, Mr Chair: I would just like to know where Mr Chiarelli is going here. I heard him say that rather than keep all the delegations waiting, he would like to continue the debate later. How much of this debate are we going to engage in now while these people are waiting?

**The Chair:** You do not have a point of order, Mr Winninger.

**Mr Winninger:** And how much are we going to engage in later?

**Mr Chiarelli:** A few more minutes, if I can continue. Is there any legal, technical time limit on my remarks, Mr Chairman? I do not believe there is.

**The Chair:** No, there is not.

**Mr Chiarelli:** Thank you. We have Dr Lowy from the University of Toronto coming in, and he did spend considerable time talking about research and treatment and various issues of that type. Keeping in mind that he is from a research, academic background, he is saying here that we are talking about treatment of individuals and persons, and when you talk about treatment of individuals and persons, you study and you experiment and you do some lab tests before you go out holus-bolus and do that. He is suggesting here basically a pilot project to implement the principles of this legislation.

I am really saying that we are looking at breaking new ground. It was admitted that this is a new model for legislation, and it is appropriate that people be able to come in, individuals and groups, and talk under circumstances where there is not the time pressure of realizing that in two weeks or three weeks or four weeks, this matter is going to be coming forward for third reading in the Legislature. I do not think the various issues encompassed by this legislation require that sort of a shotgun at the heads of people when they are dealing with this type of emotional issue. So I am making my suggestion and I am making it in a non-partisan way so these issues, this model of legislation, can be dealt with over time without pressure.

Again, I mentioned several submissions this morning. We had another submission from a very reliable group, the Ontario Association for Community Living, Audrey Cole, and again, if you look at Dr Lowy said, in many ways it is identical to what Mrs Cole is saying. "We must design"—in other words, she is talking about going back to the drawing board—"enabling legislation that validates the decision-making process of people whose decision-making is discredited, without diminishing either their personal rights or human identities."

The competence and the experience and the background of all those briefs I have read from people and the ones who have come forward so far are so persuasive that this policy area and all its implications needs legislation, but in fact they are saying that it needs review, redrafting, and reconsideration over time. I want to get that on record. I will predict absolutely that the government members will vote it down and against it, but I am hoping that they will consider them as substantive, reasonable and non-partisan recommendations.

I want to see this stuff discussed and I want to see it legislated in due course, but I think the present format is not conducive to a collective decision-making on this legislation, which is necessary. There needs to be a consensus by all the major groups, including the College of Physicians and Surgeons, the health disciplines, the people who are in the field, and I really believe that we collectively at Queen's Park from all parties are making a serious mistake and we are going against the current trend of trying to

make collective decisions on matters of serious concern to the public.

I just feel that a lot of people are uncomfortable dealing with this at second reading stage. We have heard people say that there are amendments around, which may or may not be the case. We have nobody on the government side saying they do exist or they do not exist, and there is tremendous apprehension being created, given the current process.

Mr Chairman, I am concluding my remarks. I have no idea whether anybody else on this committee is going to comment on the substance of my motion, but I do want to put it forward. I hope I can encourage some other people to make some remarks on it because I really believe we need to look at these very serious, emotional, technical, legal issues a bit of a distance from a third reading, and particularly because we are looking at a group of bills, each one of which is very technical and in the normal course would be dealt with separately by a committee such as this. We have dumped them all together and we need time. The circumstances are absolutely terrible for looking at this composite of legislation at second reading stage.

That is why I moved my motion. I hope the government will seriously consider simply standing back. There is no imperative that this be done next week or next month or six months from now. If this legislation gets through in July 1993, we will probably all be further ahead that we have taken that cold, sober look at it from a distance. But to say that we are going through clause-by-clause in a couple of weeks, amendments are going to come forward, it is going to be introduced for third reading, my guess is that you are going to create a terrible commotion. You are going to create a lot of emotional hardship under circumstances which are not necessary, so I am saying let's stand back and do it right.

1350

**Mr J. Wilson:** I would just comment that I agree with a number of the concerns brought forward by Mr Chiarelli, although I would also agree with his first comment that perhaps this is better dealt with after the witnesses have made their presentations today because they have been good enough to show up and they are waiting. But I would not want to see the government dismiss the concerns that have been raised. I think they are very serious.

**The Chair:** With the indulgence of the committee and in fairness to our presenters, is it all right if we deal with this after our last presenter today? Agreed.

Just a reminder, we are dealing with well over 100 presenters and we are on a tight time frame, so some of the things that were raised this morning—

**Mr Winninger:** Mr Chair, I move you call the question now. The points that the opposition members wish to make are out in the open and we can deal with them now in an informed way.

**The Chair:** All in favour of putting the question? Opposed?

**Mr Chiarelli:** I thought maybe they would want to make some comments on it, but I guess they are not interested in a substantive, reasonable motion that was presented



in a non-partisan way. That is open NDP government. Thank you very much.

**The Chair:** There is no debate. All those in favour of Mr Chiarelli's motion? Opposed?

Motion negatived.

**The Chair:** As I was saying, we are dealing with bills of a fairly technical nature, so you will have to allow the Chair some flexibility in the question-and-answer period, but I must remind you we have well over 100 presenters and we are on a three-week time frame so we have to stick as close to the schedule as possible.

#### CONCERNED FRIENDS OF ONTARIO CITIZENS IN CARE FACILITIES

**The Chair:** I call forward the first presenters this afternoon, the Concerned Friends. Good afternoon. Could you please identify yourselves for the record and proceed?

**Mr Simmons:** Yes, I am Harvey Simmons, president of Concerned Friends, and I am also a professor of political science at York University.

**Ms Goldstein:** I am Dian Goldstein. I have been with Concerned Friends for six years on the board of directors and I am presently just an independent advocate for seniors.

**Mr Simmons:** Thank you for the opportunity to appear before the committee. You evidently have copies of the statement I am going to make, so I will not read from it literally. Since we have so little time, I will try to be brief and paraphrase and maybe pick up on some of the important points that I think we have made and perhaps even some observations about the points Mr Chiarelli, who has just left, made.

Concerned Friends is an advocacy organization which is about 10 years old. It has about 600 members. I am not sure if we are the most active advocate for elderly people in the province, but if we are not the most active advocate, we certainly are one of the most active advocacy groups for the elderly. We have vast amounts of experience, particularly in advocating for elderly people in nursing homes in this province in addition to people in municipally run homes for the aged.

As I am sure you all know, there are vast numbers of elderly people in institutions in this province, about 60,000 in all. Approximately 30,000 are in the mainly privately owned nursing homes and another approximately 30,000 in the homes for the aged, not to mention about 12,000 elderly people and others in chronic care hospitals and in the community.

People in these institutions desperately need advocates to help them and they need them now. Just to allude to a remark Mr Chiarelli made about a pilot project, my impression of what I have seen of the Advocacy Act right now is that if it is implemented soon it will be in its entirety a pilot project; that is, the number of people who need services is so vast and the sea of misery is so deep that even the Advocacy Act which is now before you, it seems to me, will merely touch the surface of the problem that is before you.

Let me just allude here to something specific and that is the fact that—I am not sure whether you are aware of it or not—there are 30,000 people in private nursing homes

in this province. These nursing homes are inspected once a year. The inspection visits are announced in advance. The inspectors may spend two or three days there, four or five days if they find some difficulty, but for most of the year elderly people in nursing homes, unless they have relatives or friends to speak for them, have no one to speak for them at all. Concerned Friends attempts to play that role. We have in fact five or six people who are active advocates. But five or six people for 30,000 people in the private nursing homes, not to mention those in the other institutions, is simply a drop in the bucket.

We get thousands of calls every year from people who need help. Let me, however, quote to you very briefly from a letter that was sent to us last year, November 4, 1991. I note this person had no idea of the existence of the advocacy legislation, but let me just quote to you very briefly from the letter which comes from a woman who gave me permission to quote her name, Jean Trimble from Belleville:

"My mother at 103 years has just passed away in a privately owned nursing home in Belleville. She had been in the nursing home for six years and in extended care in Belleville General Hospital for a year prior to that.

"Believe me, we could write a book about what we saw during those years. Health inspectors and casual visitors do not see the true picture. We were able to keep watch over our mother, but there were many who had no advocate, no caring friend or relative to watch over them."

Those are just a couple of paragraphs from Ms Trimble's letter.

We at Concerned Friends strongly support the Advocacy Act. We have no particular vested interest in the Advocacy Act. We are an entirely voluntary organization. Our funds come purely from donations. None of us is paid. Nobody in Concerned Friends has ever been paid for their participation.

Let me conclude very quickly, because I would like to give Mrs Goldstein a chance to speak as well. There is one point I would like to raise that perhaps is not within the purview of this committee but which I and members of Concerned Friends feel is very important. This committee is concerned with the administration of justice, but I am sure as legislators you are concerned with the larger issue of social justice. You all know that in 1972 this province decided to deinstitutionalize mentally handicapped people, developmentally handicapped people. I think the community care system that was implemented was a positive step forward for them. In the 1970s and 1980s, mentally ill people were deinstitutionalized from the large psychiatric hospitals. Community care for these people has not been quite so successful.

There is an enormous irony in the fact that today if you were to suggest putting a mentally ill or developmentally handicapped person into an institution of 100, 200 or 300 beds, you would be laughed out of court. If you look at the figures for the size of the institutions which warehouse elderly people in this province, they are 100, 200 or 300 beds in size.

The point I am making here is that the Advocacy Act is a defensive measure. It is a measure designed to protect



vulnerable adults and to enhance their independence. But why not strike at the very institutions and structures which give rise to the need for advocacy in the first place? What I am saying is it is about time, if we are concerned with larger issues of social justice, that the elderly were deinstitutionalized and that a proper system of community care was put in place for them, as has been done for other vulnerable groups. In the meantime, we desperately need the Advocacy Act and, as I said before, it will even in its current form be merely a drop in the bucket. Thank you very much.

1400

**Ms Goldstein:** I would like to address three issues: first, my own experience; second, the legislation, including the two specific target populations; and third, an issue about statistics that was mentioned, I believe, by the member here, Mr Poirier, on Monday.

First, as Harvey indicated to you, Concerned Friends of Ontario Citizens in Care Facilities was really born out of the need for advocacy, and that was in 1980. We are now in 1992 and we are still a voluntary group. This group did not form because it wanted to. This group was formed because families and residents asked for help. They got together as a self-help group initially because there was such a big need. That need has multiplied in the last years.

Personally, I became involved with this organization because of my own parents. My father suffered Alzheimer's disease and my mother had a stroke. I called agencies. I called the government. I called everyone. There was no such thing as a rights adviser, an advocate, or there was not anybody who knew all parts of this puzzle. Boy, was I at sea. I found myself for eight and a half years being their advocate until they passed away. Needless to say, I suffered great desperation and great emotional vulnerability. I wanted an advocate for my parents to advise them of the services that are available.

I must go one step further. We all go through periods in our lives when we each are emotionally vulnerable. I can tell you that I was very emotionally vulnerable and I would have preferred to have had an advocate for me and my parents.

I would like to confirm what Trudy Spinks said on Monday here at this chair, that in fact families would rely on advocates. I can tell you that from the Concerned Friends' experience; families call us and they rely on us, not just as a rights adviser, which to me gives a legalistic feeling to this legislation, but really to help them see through the system, tell them what the options are, help them to get some answers from government, help them to proceed through the system. Needless to say, I support this Advocacy Act and this legislation very strongly and I believe the time is overdue.

Regarding the two target groups under this legislation, it includes adults who are disabled and it includes seniors. I am very impressed with the disability community. Those people who are functionally competent have had the ability to lobby, be self-advocates, show strength and show a great sense of self-determination. I admire them and I am

proud of them. I think seniors should take a letter from their page.

But I would like to talk about seniors too. Seniors, on the other hand, represent a group of new pioneers. As we know, never in our history have we had a population, a generation, that has lived this long. You know, we all think it will not happen to us. We all hope that one day we will be lying in our bed at 92 and we just will not wake up, or we will be sitting playing cards at 87 and we will roll over on the floor. Seniors have not had the ability yet to look forward to see what kind of morbidity or mortality faces them in the future.

I mention this issue because I believe in the advocacy system so strongly. But I would like to see some kind of emergency system set in place or some kind of mechanism so that we could concern ourselves with the numbers of people and the vulnerability so the services of advocacy for the disability community and seniors are equitable and balanced.

As Harvey indicated, there are 72,000 seniors presently needing advocacy, who are living in long-term care institutions which include nursing homes, homes for the aged and chronic care. This does not include all the seniors who are vulnerable, because once you become institutionalized, institutionalization breeds dependency, and we all read the literature and we know that dependency breeds vulnerability. Aside from those 72,000, we have people living in retirement homes and rest homes, boarding homes, and the rest of the seniors who might have some level of dependency live in the community.

Third, Mr Poirier, when Steve Fram mentioned on Monday that we do need this advocacy to avoid exploitation, abuse and neglect, I believe you questioned him, "Do you have any statistics?" I would like to address that point.

For all of these years since the Nursing Homes Act has been in existence, they have been doing monitoring to see if in fact nursing homes have been in compliance with the nursing home regulation and the Nursing Homes Act. This has been going on since 1972, and of course that is why Concerned Friends was born in 1980.

Because we always come to government and we always write letters on the experiences only that Concerned Friends has from family and residents calling us, we decided to write a report about the compliance review reports. As Harvey mentioned, the inspectors or, as they are now called, compliance advisers go in once a year to look at nursing homes, so we looked at their compliance review reports. There were 263 chosen randomly, and 146 homes had serious violations. One of the violations that I will address is under nursing services. The nursing services include general nursing services and safety nursing services.

Of these 146 homes, 33% of them had serious nursing violations, and may I read just a few of these? "Residents in geriatric chairs are not repositioned hourly, and therefore they have skin breakdown and bed sores." Just another one: Do you not like your shower every morning? The basic regulation indicates one bath a week, and in fact this was found to be not always in compliance either, and residents were not even receiving one bath a week.



Residents were having restraints applied to them without a physician's written order and without supporting documentation and assessment, and in some cases, it indicates, they were not even aware of these appropriate restraints. Also, not all incidents have been documented. There have not been incident reports written.

I have a whole book of this neglect. The neglect has been documented; we need no further documentation. May I indicate to you it is not just since January 1990 to March 1991 that we have written this report, but this has been happening all along. With the time, I think I will just conclude my report.

**The Chair:** Thank you. Each caucus will have about five minutes. Mr Poirier.

**Mr Poirier:** I want to reassure you that I was not questioning the validity or if there was any evidence whatsoever. At least I personally, and I am sure my colleagues also, strongly support the basic principle of advocacy. I know there is a great need for it out there.

The question is why, and what I have explained to advocacy groups that have come to see me is we want to make sure that, along with the principle that we strongly support, we want to see something that is practically applicable, that is useful, that will not cause, in some particular cases, more problems than it is supposed to resolve. That is the only reason that we are raising questions.

I do not question whatsoever what you are seeing and what you are bringing up; I know it does exist. I have been extremely fortunate in my riding. I do not think you will find too much from my riding. At least in my seven years, if you go by the number of complaints, it has been very good. Thank goodness, and I wish other ridings could benefit from that. But obviously there is quite a case load. We strongly support that, but what we are seeing is what we perceive and a lot of other people perceive to be serious problems in applying the theory of the good principles of advocacy and what we think may happen to the contrary, with all the good intentions and the goodwill of everybody, and we are worried about that.

These are the particular points that we have seen addressed, that we want addressed, and we want to impress upon the government, with very good will, to make sure that, as the parliamentary assistant has mentioned, the minister is listening. From what you have heard, I am positive that you will come forward with some amendments to make it even better. I want to tell you and the government members that at least I am strongly supportive of the principle.

I think my friends on the government side know me well enough to know that if we make a criticism, it is a constructive one. I want to reiterate that to you, just in case you thought we were coming from a different angle.

**Ms Goldstein:** Thank you.

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**Mr J. Wilson:** Like Mr Poirier, I think we, in our heart of hearts, know of the problems you bring to us, particularly as representatives of our ridings. I am not sure my riding is as perfect as Mr Poirier's, because we have had problems in nursing homes. I was an assistant for

some seven years and I have personally had to spend a great deal of time intervening in cases where we had problems.

One of the major concerns, though, to be frank about it, is the cost of this. We had Dan Ferguson in here this morning, a lawyer who had done some research through access-to-information requests, and he brought forward a letter from the public trustee stating that his budget will have to go up some \$42 million to accommodate what the government is expecting of his office under this legislation. That is from a reputable person who is the public trustee of the province.

I guess you agree, so it is a rhetorical question, that we should be setting up a very large system of advocacy. I was wondering, though, how much the government has looked at improving our inspection system and providing better training and putting resources into what we have. I am the Health critic, and it is a pipe dream. If we are going to spend this type of dollars on advocacy, we are not going to be able to move in the near future—and maybe in my lifetime—to the proper community-based care that we require, because there just is not the money to be doing everything and it does boil down to a question of priorities. Maybe I could just hear your comments from the other side of the coin, for those of us who are very much worried that we cannot have everything and we have very limited resources.

**Ms Goldstein:** One comment: Mr Chiarelli mentioned how important this is for human value and humankind, and I think that any—

**Mr J. Wilson:** But social justice has a price.

**Ms Goldstein:** That is right.

**Mr J. Wilson:** Bob Rae can go around and put it in our charter, but there is a price attached to it, and that is the reality we have to face. I have met with groups that have said, "Well, the price does not matter." We have also had many groups in here saying: "Well, we cannot do a half-assed job of this. We have to do it right or do not do it at all. It may inflict more harm than good." So that is where I am coming from.

**Ms Goldstein:** I am just going to mention one other comment that you talked about, the present, existing people who could be inspectors or compliance advisers. The unfortunate thing is that we have a government and civil servants who have been acting in that role now since 1972. They give licences, they monitor care and they attempt to enforce it.

Unfortunately, the compliance advisers and the inspectors—now I am not saying this for all of them, but there is a tendency, because they are all part of the same system, to cosy up to the administrators. I am just talking generically, not specifically, that this does occur, and as a result, appropriate enforcement cannot be part of this. That is why we have always recommended that if we give licences, an independent body should be there to do the enforcement, to check for monitoring and compliance, so that an appropriate event can take place when people go and look at whether they are in non-compliance with the act.

We feel there is a bit of conflict of interest with one branch of the government doing all things. I agree that there has to be priority, but this issue of advocacy has been

around for a very long time. I recognize that they have to be balanced, but in view of this balance, I really have felt that advocacy should be at the top of the priority list. I can honestly say I do not know about funds, I do not know about trillions of dollars and how you divide it up, but I do think if you put the nays and the ayes on the other side of each line, the Advocacy Act should be at the top of the list.

**Mr Simmons:** Can I just briefly respond to that question? You are right that there are scarce resources and one has to make decisions about where they go. You mentioned putting more money into health inspection. Health inspection, from my knowledge of the literature, never works anywhere. It simply does not work. This province has fiddled around with it for the last two decades; it has never got it right and it never will. The reason is you cannot inspect properly homes of 100, 200 or 300 beds unless you have someone in there every single day of the year. That, I think, is not an option.

Exactly where money should be put is up to the government in the end. As far as the current system goes, it seems to me no government has really looked into the question in depth to decide, for example, whether it might be as cheap or even cheaper to start moving people into community residences, scaling down the large nursing homes which now take hundreds of millions of dollars out of the province, to see whether in fact you can have a one-to-one swap; one dollar for the community, taking away a dollar from the nursing homes, that is, using dollars that go to the nursing homes and the homes for the aged for smaller community residences. If it is small, it is easier to maintain quality and you automatically, therefore, take care of the quality problem. But I agree with you, there is a question here of priorities, and we are well aware of that.

**Ms Carter:** I would like to congratulate the presenters on their active concern for vulnerable people. I think that is wonderful to hear about. I would like some clarification. You have said that your organization does not receive any government funding for advocacy services, so I take it that is absolute; you are not getting any money at all. Do you know of any organizations like yours that do receive government funding for advocacy services?

**Ms Goldstein:** The only organization we are aware of is the psychiatric patient advocate office which, from speaking to the advocates in that office, does a terrific job. We just wish there were more of them and more advocates for people who are in institutions for seniors.

**Ms Carter:** It has been suggested in this committee that the profession of advocacy under Bill 74 might be a duplication of services already provided in the community. Do you agree with that?

**Ms Goldstein:** No. There are no such services, there is no duplication of service. We are a totally volunteer organization and we are the only one in this province that voluntarily helps seniors as advocates. We are not aware of any organization that is paid. Are you?

**Mr Simmons:** No. As far as providing the service goes, if you call perhaps 10 advocates, six from Concerned Friends and four others who are volunteers from across the province providing the service, then okay, but as I said

before, we are just touching the tip of an iceberg. This is a service that has yet to be provided and really is not being provided, by us or anybody else, as far as I know.

**Ms Goldstein:** Just to add to that, some people might suggest that service providers in fact can provide advocacy. We totally feel that they cannot, because when a service provider works for an agency, he has that organization first at heart. He cannot have the resident or the senior first in his mind in order to protect him and provide advocacy.

**Ms Carter:** In a sense, there is a conflict of interest.

**Ms Goldstein:** Definitely a conflict of interest. We just do not feel service providers can be effective advocates.

**Mr Curling:** Just a point of clarification for Miss Carter about duplication. They talk about advocacy, the Ombudsman, human rights and race relations. All those organizations are advocate groups. As a matter of fact, there are groups being funded by government to advocate for the rights of people in some respects. So when we talk about there being no groups that get government funding—

**Ms Carter:** But if you are looking at racial groups, for example, those people are not vulnerable in the sense that we are talking about under this act.

**Mr Curling:** No, they are not vulnerable.

**Ms Carter:** They may be discriminated against, but they can speak for themselves.

**Mr Curling:** Yes, not getting any jobs and things like that, but not vulnerable.

**Mr Fletcher:** Thank you for your presentation. You have been around since 1980 working with your group. Is the Advocacy Act going to benefit the people you see every day and also your organization?

**Mr Simmons:** I certainly hope so, yes. I assume that was one of the intentions of the act at the beginning.

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**Mr Fletcher:** I want to get to the last part of your presentation. Let me just read it: "This act should be seen as merely the first step on a long road." What do you see the act progressing to as it goes along? What would you build in so it can evolve into what you would like to see?

**Mr Simmons:** I am not sure if I can speak for the organization, but I would personally like to see a two-track approach. First would be the implementation of a comprehensive Advocacy Act that would cover vulnerable adults, including particularly seniors. The second track would be deinstitutionalization of the elderly. Those two things should move in sequence and together. I do not think one necessarily replaces the other.

**Mr Fletcher:** Just one quick point. Do you think we should scrap these hearings and send everyone home?

**Mr Simmons:** Absolutely not. I think the hearings should conclude as quickly as possible and the act should be implemented as soon as possible. As I said before, the act as it stands is a pilot project. I assume, given monetary constraints, that the number of advocates you are going to appoint will be few in number.



**Mr Fletcher:** I thought that was folly myself. Thank you.

**The Chair:** You have a quick response?

**Ms Goldstein:** I was just going to make a comment on Mr Curling's comment. I do not have any statistics, but we know people who have in fact attempted to approach the offices you have suggested and they have found they have been bottlenecked with waiting lists and they have not had an opportunity to get their needs served. So although you might have mentioned these other organizations, they have been ineffective for seniors' case advocacy, and that is what we are looking at right now.

**Mr Curling:** True. That is right.

**The Chair:** Mr Simmons and Ms Goldstein, on behalf of the committee I would like to thank you for taking the time out to give your presentation.

**Mr Sterling:** Mr Chairman, while we are having the next group come forward, I would like to ask the parliamentary assistant for the Ministry of Health a question. I understand that it is contemplated that there are going to be 150 advocates under the Advocacy Commission. Is that correct?

**Mr Wessenger:** You would have to direct that question to the parliamentary assistant for the Ministry of Citizenship, because I am not aware of the details of the advocacy program.

**Mr Sterling:** I would like to know how many advocates we are contemplating having.

**Mr Malkowski:** In response to your question we are looking at 150 or over, plus volunteers.

**Mr Sterling:** There are 284 hospitals or something of that nature. How many nursing homes and homes for the aged are there in the province, Mr Wessenger? How many nursing homes are there in the province?

**Mr Wessenger:** I would have to refer that to staff to see if they can answer that at all.

**Ms Auksi:** I think we would have to bring you the figures. I do not have them off the top of my head.

**Mr Sterling:** It would be hundreds.

**Mr Wessenger:** I think it is fair to say that it would be in the hundreds.

**Mr Sterling:** My concern is the advocacy model, which we have just heard about. Is it really going to be able to be utilized in nursing homes, or are we really laying false hope for people who are putting forward this? I would like to know whether they are coming here with a false impression that the advocates are not going to be able to help out the elderly in nursing homes.

**Mr Wessenger:** I will answer this only from a Consent to Treatment Act perspective. We anticipate that the only role the advocate is going to play in the Consent to Treatment Act is as a rights adviser and nothing else, no other role, and I understand that would be a minor role with respect to the activities of the advocates. I think we could again probably ask the parliamentary assistant what he perceives to be the general overall majority role the advocates would play. I understand the area in the health

field is going to be very minor with respect to the role of the advocate and with respect to the Consent to Treatment Act in any event. Perhaps we could have Mr Malkowski indicate.

**Mr Malkowski:** The Advocacy Commission will have flexibility in deciding things such as fee for service, also using volunteers. Their function will be limited to rights advice and advocacy only.

**Mr Sterling:** I do not want to draw conclusions, but the group that was just here had the impression, in my view, that the Advocacy Act was going to greatly enhance the lives of people who are not represented in nursing homes. I guess what you are telling me is that they have drawn the wrong conclusion. I mean, if they are not going into nursing homes, then—

**Ms Akande:** If I may interject, Mr Sterling, I had the impression, and I may be wrong, that the reference to advocates that was made by the last group was really looking at extending their use and making them available to all people. I think the way this is written, it is written as though only those people who find themselves in extreme need or who are without the kinds of resources and the kinds of answers to questions that they need, will actually refer to advocates. What you are referring to is, there seems to be a difference in the kind of need that is out there and the numbers that have been put in place in order to respond to that. Am I clear about that?

**Mr Sterling:** I am concerned about two things. Number one is the numbers that we are talking about. Not one of these advocates is going to walk into a nursing home, as I can understand, because they are going to be so busy in other parts of the system that no one within a nursing home is going to get an advocate unless they pick up the phone, or a health care provider picks up the phone, and calls them. I do not think that is going to happen very often.

My concern is that when you bring in an advocacy system like this, then you give all kinds of impetus to the system to say we do not need to enlarge our inspection branch in terms of dealing with nursing homes, or we do not need to be as concerned about that because we have these advocates out here who are going to answer for these vulnerable people. I think the wrong message is going out as to what these advocates are going to be able to do in society.

**The Chair:** A quick response, Ms Akande.

**Ms Akande:** It would be my feeling that certainly the inspection system has not worked on its own. It has not worked in a way that makes advocates unnecessary. I think most of us would agree with that, and that there are still large gaping holes. One of the presenters made the point that if you are going to rely on an inspection service, you would have to have inspectors there all the time in order to understand exactly what was going on all the time. What we are doing here is marrying two systems. We are trying not to remove the inspection system, which is necessary, and supplementing it with another need that is there, and providing services to people who need some support in terms of where to turn and how to access information, how to get the very best support, and also serving those people who have no one to speak for them as well.

## ELVIN McNALLY

**The Chair:** I would like to call forward now Mr Elvin McNally. Good afternoon. Could you please identify yourself for the record and then proceed.

**Mr McNally:** I am Elvin McNally, from Guelph, Ontario. I am speaking on behalf of family members this afternoon and on behalf of those who are related to people ill with schizophrenia. Each one of you will have a copy of my short speech by now, I am sure. In the interest of time I will stick to my little prepared speech.

Of the six bills that are being presented, some with more serious implications than others, I will concentrate my remarks today towards Bill 74, the Advocacy Act, 1991, and what we perceive to be even more barriers to obtaining treatment.

Our family has been affected by the illness called schizophrenia for the past 17 years. We have been members of the Guelph chapter of the Ontario Friends of Schizophrenics since it started 10 years ago. I was president for eight of those years, and I am also a member of the Ontario board of OFOS, but I will be speaking primarily of our own family's story, although many of our chapter's members' stories are quite similar. It is a story of sadness, heartbreak, frustration and anger over unsuccessful attempts to get help for a relative within a system that has not worked.

Our problems started in 1975 with our daughter Carolyn, age 19, who had been a first-class student, a first-class daughter, and even an exchange student in Mexico for the Rotary Club. She seemed to have a great future ahead of her but she started to show signs of inappropriate behaviour, including hostility towards her family, demands to be driven to the airport in the middle of the night for destinations unknown, appearing at a church every Saturday at 5 pm, wandering the streets and eventually disappearing through our basement window on the coldest night of the winter. The police found her three days later with badly frozen feet. That happened to be Christmas Day, so it was quite a day in our house. She was hospitalized for medical treatment.

After several more attempts to disappear, since she was in an extreme psychotic state, we were able to get her admitted under police escort into the Homewood Sanitarium in Guelph. Thanks to the mental health laws before they were revised, she was committed long enough for the psychiatrist to diagnose her as a paranoid schizophrenic and provide treatment for both her psychotic state and severe depression. With properly regulated medication, a few shock treatments to lift her depression and ample follow-up with her doctors, she was able to enter the University of Guelph and attain 16 credits towards her BA degree. Eventually, she started to deteriorate, because she had for various reasons discontinued her medication.

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By that time also, which was now in late 1977, the rules had changed dramatically, due to excessive input from people called advocates, who had placed great emphasis on people's rights. Even though her illness was well

known, we were unable to get her help, since she continually signed herself out of the hospitals.

Time is too short for too many details, and I will skip through, although during the years from 1977, we certainly had our share of activities with our daughter. We spent many nights at the Guelph General Hospital emergency room sitting with other people who had cuts and bruises and the flu. In our case, our daughter was there because she had attempted suicide, and she had other serious problems. We walked with her through a pregnancy which resulted in a son who was given up for adoption at birth.

Two specific years come to mind that I will mention. In 1987, in an extreme psychotic state, she jumped from a friend's car on Highway 7. She was taken by ambulance under police escort to the Homewood Sanitarium where she was committed. Several days later, having been informed of her rights, she insisted on appearing before a review board consisting of her doctor who had known her for five years, a lawyer who had never seen her before, and a staff member from the Homewood. She was soon discharged, having made numerous promises that she could never keep.

Three times in 1987 she was on the police missing persons file and turned up in such places as Vancouver as well as Niagara Falls, New York, in her bare feet. She was placed in a temporary holding cell in the state hospital. We asked a Guelph psychiatrist who had also known her from previous visits if he would sign the necessary forms, so she could be moved to Guelph, and he said: "Because of the change in laws, if I signed the form, she would sue me and I would lose." We drove to Niagara Falls, New York, at 2 am, because they were putting her out on the street. If you have ever driven in Niagara Falls, New York, at 2 am when the bars are being unloaded with their customers, it is not a very good place to be and even the police would not go. The most they would do was to give us directions. But we eventually found her, we found the hospital and we found her in a terrible state, but she never received any treatment and we brought her home.

In 1989, she was evicted under court order or left on her own seven different apartments or rooming houses in Toronto, Hamilton and Guelph. Often, we paid the first and last month's rent to obtain the residence. We do not do that any more. The last time we let her stay at our home, she phoned the fire department who came with all their trucks, telling them that we were trying to poison her with ozone. The police said they would escort her to the hospital, the medical doctor said he would sign the necessary forms, but the Homewood doctor told the medical doctor that "If she doesn't ask to see me, I can't see her."

In the last two years, she has spent a lot of time walking the streets either in Toronto, Niagara Falls or Guelph between midnight and daybreak, stopping at coffee shops. As I prepared this presentation last week, she had been missing for 72 hours. We do not phone the police any more. She will have to keep walking until something terrible happens. She is totally unable to attend to her personal responsibilities, including preparing her meals and paying her bills. No one, including the advocates, would ever attend



to her needs. They would be too busy explaining her rights.

Last January an elderly couple—and this is another example that I have heard from being present at the Guelph chapter—attended our OFOS monthly meeting, stating that they had just had their daughter placed in the Homewood and pleased that she would get some help for her illness, which was schizophrenia. After several weeks she signed herself out. Her room-mate and her doctor pleaded with her to stay for further treatment. The doctor said that under the existing laws they were unable to keep her. The time it took her to walk from the Homewood to the roof of the downtown Eaton Centre parking garage, which is about one mile, was the length of time she had remaining in her life. She jumped. Her aging parents are now trying to raise her six-year-old daughter.

If we were living in a more perfect world, we would be able to work with the mental health system with input from the families who have had lots of experiences, enforcing where necessary the proper treatment when they needed it and having competent professional backup to keep them as adequately treated as possible.

Thank you for your time.

**Mr Chiarelli:** Do you have any changes that you would recommend in the existing law to accommodate situations such as those that you have described?

**Mr McNally:** What we would like, and we would only want to use it when we saw our daughter in extreme need of help, is to be able to phone a doctor and using, say, the Homewood Sanatorium, which is in Guelph and where they have competent psychiatrists, we would like them to feel comfortable with being able to treat our daughter and get her back on her feet. All she needs is a bit of discipline, a bit of regulated medication and probably some good group therapy and I am sure that in no time at all she would be able to function for another period of time.

**Mr Chiarelli:** I am not asking you to get too technical in terms of drafting legislation and so forth, but Dr Lowy from the University of Toronto was here this morning, and to a specific question as to whether the existing legislation fully protected the interests of schizophrenics he said, "Certainly not in all circumstances." There are some gaps in the legislation from Dr Lowy's perspective.

From your perspective, but without pushing you too much, could you be a little more specific in terms of what rights you as a parent would like to have to properly restrain your daughter and to get her back on her medication where her situation could be regularized?

**Mr McNally:** I guess I can only hark back to, say, 1975 and earlier, because at that time when we had her in the Homewood—she was committed—her doctors told her she was going to stay. Several times she got away from the Homewood and she was brought back, but I think she knew in her mind that she would have to stay there until at least she got better enough that her psychiatrist would release her, which took a bit of time that first time because she was so ill. But I do think that there needs to be discipline involved. We need to have the right, where we see a relative who absolutely requires treatment—and that is not to

abuse it—to actually force some kind of discipline and stay longer than what maybe is a current 72 hours. Even then they do not have to receive treatment if they do not want it.

**Mr Chiarelli:** Do you think it might be appropriate to have regulations that maybe are a little specific and which you can shoot with a rifle instead of a shotgun, in the sense that perhaps there could be categories of situations, such as for schizophrenics, where there could be a more automatic treatment and consideration for family members who want to in fact see them restrained in hospitals and put on medication? Do you think there should be regulations that are a little more specific for situations? Situations like yours are not uncommon. The situation with schizophrenics, what you are describing, is very common. The situation of the daughter who left the elderly parents and committed suicide is very common. There is a high rate of suicide. Do you think we should design regulations that are more specific for specific illnesses or circumstances?

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**Mr McNally:** Yes, I definitely do. I think it would make a tremendous difference for those of us who love our loved ones to be able to get them help.

**Mr Chiarelli:** Do you have any expectation that this committee or this government will accommodate that need as you see it?

**Mr McNally:** I think the one thing we have to live for is hope. We have to have some hope or probably a lot of us would pack it in. I am sort of optimistic that this committee, giving everyone a fair hearing, would be able to devise some legislation that would be able to help the people who really need it. It is my hope that I would come down to Toronto today to state our case which is not easy to state and that something good may come out of this.

**Mr Sterling:** I cannot say much to you other than that I thank you for your courage in coming here, sir. My heart goes out to you in terms of your personal circumstance. I only hope this government will not have so ingrained its ideology, this concept that we cannot ever trust other people to make decisions for other people during any part of their lives, regardless of their handicap or that the problem is not so deeply ingrained that it cannot accommodate your situation.

**Ms Carter:** I do feel for you. I have heard stories quite similar to yours from parents of schizophrenics who live in my own city of Peterborough, but it seems to me we are treading a very fine line here. There do seem to be some cases where the freedom does turn out to be self-damaging, yet I have also met psychiatric survivors to whom that freedom was vital in finally overcoming their illness. I think we have to look at both sides of that.

The Ontario Friends of Schizophrenics in Peterborough have written to the psychiatric patient advocate office stating very clearly, "Your psychiatric patient advocate office is absolutely necessary." Of course, as you know, there are already advocates in psychiatric hospitals. In some cases I believe they have informed families about situations which affected the patient who is a relative and about whom they would otherwise have been unaware. They have then been

able to follow up and they have been very grateful for that, so it is possible to see advocates as being supportive of families. Can you comment on that? Can you see how that could happen?

**Mr McNally:** I can see there probably are instances where a person who is ill could be or would be severely abused. I do think they need to have someone they can turn to for help. I think it would also be incumbent on the people who are helping the ill persons to not only see that they are not abused, but also to work towards actually getting them help through medicine and other therapy that they need to get back on track.

It should not just stop at protecting them and taking them away from where the abuse is, which would be a very important thing to do, but it should follow through to get them help as well. That is what a lot of them need. They just need to be put back on their feet again and they will be good for another period of time.

**Ms Carter:** I could point out that the point you make on page 3, that because your daughter would not give consent she could not get treatment, is under the existing legislation; that is not something we are just bringing in that is going to be new. Also, you mention the question of catering to needs. I hope we are doing that, under different headings, not in this specific act, but obviously that is something that has to be addressed. I hope you will find that we are doing that.

**Mr McNally:** I hope so.

**Mr Winninger:** Mr McNally, I too found your history quite poignant. Would you agree that your daughter, who walks on the coldest night of the year in her bare feet and jumps from cars and does things like that, is someone who at the present time is unable to care for herself to meet her basic needs?

**Mr McNally:** Yes. It is quite obvious.

**Mr Winninger:** I guess you would be aware that Bill 108, the Substitute Decisions Act, provides that there can be court-appointed guardians for the personal care of an individual such as your daughter. Is that something that you would support?

**Mr McNally:** If they would actually take my daughter to the point where she does get help, I would support it. For the last 15 years our daughter has never really been well enough to say: "Some day I'm going to really be psychotic again. I'd like to appoint a guardian now who will be there when I need him or her."

**Mr Winninger:** There are some people who have argued that the appointment of a guardian by the court derogates from the dignity and self-worth of the individual. Do you see, in your daughter's situation, the guardianship as perhaps enhancing your daughter's sense of dignity and getting her back on her feet again with the proper personal care decision?

**Mr McNally:** If our daughter would go along with that and knew and trusted and had confidence in the individual, that would be great. But I think the problem would be to find the right mix of her and whoever would be appointed to be her guardian. We have had a number of

people over the years try to help her, even the psychiatrist who went to sign the forms. He actually had her as a patient for three years and they got along well but he started to get scared, I guess, because of the change in the rules.

**Mr Curling:** Would you say that you are a good guardian to your daughter?

**Mr McNally:** We try to be. We are not the best, mainly because when she gets ill with schizophrenia and the hostilities develop we are there and we are really the ones who are involved with her 24 hours a day, seven days a week even when she is missing. Someone more competent than we, where there was not the conflict of being a father or mother, probably would get better mileage than we can.

**Mr Curling:** In appointing advocates or a guardian or whatever, it would be good that they check first with the parents, who understand.

**Mr McNally:** It would be very important that they work together and it would be very important that the advocate be very clued in on schizophrenia, because people who are ill with schizophrenia are much different from people with AIDS or Alzheimer's.

**The Chair:** Mr McNally, on behalf of the committee I would like to thank you for taking the time to give your presentation this afternoon.

#### AIDS COMMITTEE OF TORONTO

**The Chair:** I now call forward the AIDS Committee of Toronto. Good afternoon. Could you please identify yourselves for the record and then proceed.

**Mr Flanagan:** My name is William Flanagan. I am a member of the board of directors of the AIDS Committee of Toronto and I teach law at Queen's University law school.

**Mr Fitton:** My name is Wayne Fitton. I am an AIDS support counsellor for the AIDS Committee of Toronto.

**Mr Lyttelton:** My name is Ned Lyttelton. I am also an AIDS support counsellor for the AIDS Committee of Toronto.

**Mr Martel:** And I am Bob Martel, executive director of the AIDS Committee of Toronto.

**Mr Flanagan:** We at the AIDS Committee of Toronto strongly believe that all persons should be able to live and die with dignity. This includes an individual's right to control his or her body, determine the nature of his or her health care, consent to or refuse treatment and decide who will have the ability to make treatment decisions in the event he or she becomes incapable. We also believe that non-traditional family members, in particular lesbian and gay partners, should have a prominent and recognized role to play in making health care decisions for persons who have become incapable.

For these reasons we are here today to endorse the government's proposed legislative provisions governing consent to treatment, substitute decision-making and advocacy services for vulnerable persons.



I would like to highlight some matters of particular interest and concern to ACT. I would like to make five brief points, then I will turn to Ned and Wayne, who are on the staff of the AIDS Committee of Toronto and who will be able to provide you with some of the insight they have gained working with people living with HIV and AIDS.

1450

The first point I would like to make is with respect to the Consent to Treatment Act, which will codify the current common-law requirements for consent to treatment. We believe this is important. We are particularly concerned about treatment that is for diagnostic purposes which we believe would include HIV antibody testing. Currently in Ontario it still happens that some physicians and hospitals order HIV antibody testing of patients without their informed consent. We hope the Consent to Treatment Act will address this and require specific, informed and voluntary consent for all HIV antibody testing.

Second, I would like to discuss the power of attorney for personal care under the Substitute Decisions Act, which will provide for the appointment of a power of attorney for personal care. This person will be able to make treatment decisions on behalf of others who will become incapable. Most important, the appointed person must comply with the wishes expressed earlier by the now incapable person, including the right to decline treatment.

At ACT we strongly support this proposed legislation because we believe individuals should have the power to determine the nature of their health care in advance of any illness or disability that might render them incapable. That individual should also be able to decide who will make these treatment decisions. The act will enable, for example, lesbian or gay people to ensure in advance of any illness that a partner or friend will be able to make any necessary treatment decisions for them should they later become incapable. As you know, the law will not currently permit this. In many cases the legitimate role of lesbian and gay partners and other non-traditional family members has not been recognized and has in some cases been entirely eliminated by insensitive health care institutions or homophobic traditional family members.

Third, I would like to discuss a recognized role for lesbian and gay partners under the Consent to Treatment Act. Under this act, in the event that a person becomes incapable and has not appointed an attorney for personal care and no other person has been appointed, either as a guardian by the courts or as a representative under the Consent and Capacity Review Board, then the spouse or partner of the incapable person will have the authority to consent to treatment.

Most important, the act defines "partner" broadly, to include two persons who "have lived together for at least one year and have a close personal relationship that others recognize is of primary importance in both persons' lives." We believe this will include gay and lesbian relationships and will have the effect of granting a legitimate and recognized role for these partners in making health care decisions for persons who have become incapable. We believe, however, that the proposed legislation should specifically mention same-sex partners in subsection 1(2) as an exam-

ple to illustrate how "partners" is to be interpreted under the act. This will prevent any uncertainty that may arise in recognizing the legitimate role of lesbian and gay partners.

Fourth, under the Advocacy Act advocates will be involved whenever a determination is being made that a person has become incapable. We believe the role the advocate will play is an important one. It will ensure that the rights granted to others to make treatment decisions for incapable persons will not be abused. We also support the limited powers that advocates will be granted under the act to enter facilities and other premises to provide advocacy services to vulnerable persons.

In our experience, particularly with some of our clients who are hearing-impaired, some health care institutions have been unwilling to make the efforts necessary to ensure that adequate informed consent has been obtained prior to treatment. Institutions also tend to defer to traditional family members, even in the event that there is some doubt about a patient's ability to understand or consent to the proposed treatment. We hope advocates will be able to ensure that such vulnerable persons are informed of their rights and options, including the right to require that the hospital obtain adequate informed consent prior to treatment and the right to appoint a power of attorney for personal care in the event a person wishes to appoint a same-sex partner or any other person.

Finally, we would like to make a point with respect to adequate resources and information. To make meaningful the proposed legal options for substitute decision-making, it is essential that the information and means necessary to draw up a power of attorney for personal care be widely available to all persons. We believe the proposed Advocacy Commission should assume some responsibility for this, but as well the government as a whole, in particular the Attorney General's office, should assume some responsibility. This should include public information campaigns, the publication of accessible information pamphlets and the widespread availability of the forms necessary to execute an enforceable power of attorney for personal care.

**Mr Fitton:** As I said, I am Wayne Fitton from the AIDS Committee of Toronto; I am an AIDSupport counsellor there. I just want to relate to you a couple of incidents. I could sit here today and tell you a number of situations we have come up against where such legislation would have been helpful.

One case I want to make reference to is that a year ago I was working with a client of mine who was a deaf man and was in hospital for treatment and ended up in the final stages of living with AIDS. I was his counsellor and, because we have a deaf outreach project at our agency, was using an interpreter to go in and do counselling sessions with this client and also talk about options that were available to him, and drug treatment, and a possible option too, if palliative care was going to become the issue, that he could make an informed decision as to whether he wanted to be in a hospital or in Casey House.

We were working with this client. The hospital did not see the need for the use of an interpreter or my role in the hospital to help this person be very knowledgeable about the type of treatments and the complications he was experiencing.



We were advocating for this client and were making some progress, very slowly. Then the father, who lived in Mexico, was notified and was brought back to Canada because he heard that his son was dying. Then he went to the hospital, to the specialists, and informed them that his son completely understood his father, who was a speaking man, and that the father could interpret all the information to his son around treatment and options available to him. Unfortunately, this was not the case: The son did not understand the information being presented to him. Therefore, I do not feel he had the ability to make choices and options for himself. That is one particular case I wanted to cite.

Second, being an HIV-infected gay male myself, I certainly have a healthy respect for my biological family and have a relationship with my family. Unfortunately, my family does not live here in Toronto. They are scattered in Ontario and British Columbia. Although they are aware of the fact that I am a homosexual male and living with HIV, they are not knowledgeable about the various complications and treatments I have to deal with. Therefore, I would like to have the option to name—I have two people who are very close to me who are very knowledgeable and aware of HIV disease and treatment—either a friend or extended family member who is aware of my situation to act on my behalf. Again, I support this.

**Mr Lyttelton:** My name is Ned Lyttelton, also from the AIDS committee. I would like to present the case of a man whose name was Ray, or that is what I will call him, who was a long-term survivor of AIDS. He was diagnosed early in the history of the disease. He was an active member of the AIDS community in Toronto. He was one of the cofounders of the People With AIDS Foundation and had an extensive network of friends and support people.

Towards the end of his life he was living in a house like a group home, specifically designed for people with HIV. He had expressed, not in writing but on several occasions verbally, to his friends, the counsellors who were working with him and the volunteers who were involved with him that this was where he wanted to die. He did not want to have drastic interventions medically, he did not want to be put on any life-sustaining mechanisms; he wanted to die in the home where he was living. He had a supportive care team of volunteers and friends who were prepared to be there for him and look after him, to do attendant care nursing for him on a 24-hour basis.

His parents, who lived out of town and had very little contact with him during the last months of his life, appeared, saw how he was, which was in very rough shape, basically panicked and took him to a hospital against his wishes. He was not incompetent mentally but he was not in any state to resist this. They were not aware of, and they were also not responsive to, his wishes as his care team explained them to his parents. They insisted that they knew best and took him to the hospital, where he died within 48 hours in a place he had not wanted to die in. It was as if he gave up once he got there. This is one of many situations where, had he had a power of attorney for personal care clearly defined, this would have been avoided. If he could have used an advocate at that point, given the vulnerable state

he was in, the advocate could probably have avoided this situation also.

1500

**The Chair:** Thank you. Each caucus will have about four minutes. Questions or comments?

**Mr Poirier:** No question or comment. Thank you for coming forward. The types of cases you bring forward are obviously justification for application of the principle of an advocacy law. I cannot imagine anybody questioning that, and the cases you bring forward are very good. We in the opposition are trying to make sure the law that will come forward will not have any loopholes or defects between what you and all of us want to see happen and what is finally delivered in law; in fact, after the passage of the law. We want to make sure it is the same thing and not something different or something that will cause further problems which may or may not appear now or be hidden. We support it. Thank you for coming forward.

**Mr Sterling:** I just want to say that, having brought forward the initial legislation dealing with this, your situation of course crossed my mind in terms of particularly the need for durable powers of attorney dealing with personal care. Your community was in my mind when I was drafting that legislation. Your point is well taken. I think it is a very important matter, being able to die in dignity in the surroundings you want.

I was interested in your last comment with regard to the advocates. As I understand these acts, if your friend had been competent at the time, then essentially there would not have been anybody who would have called the advocate at that time. I just do not want you to leave here thinking that the advocate would have interfered at that point in time. As I understand it, the Advocacy Act would come into effect when the health care provider determined that your friend was not competent. If he was mentally alert, as you say he was, I am not sure they would deal with it that way. Maybe you can correct me on your reading of it.

**Mr Lyttelton:** As I understand the Advocacy Act, advocates are entitled to make advocacy services available to vulnerable persons. Vulnerable persons are not incapable persons. Vulnerable persons could be capable of consenting to or refusing treatment. This, I think, is a good example of a vulnerable person who was being forced to submit to treatment he did not want. Had it been possible to call the Advocacy Commission and say, "We're concerned about this. This person is capable but vulnerable and his wishes are not being followed. Can an advocate go and talk to this person and advise him of rights and options that may be available to him," a very important option would have been to appoint a power of attorney for personal care to make these decisions, if that was something the person wanted to do, or at least have had the advocate say to the parents in this case: "Your son is capable. These are the decisions he has made. The law requires you to respect them."

**Mr Sterling:** I guess it is a judgement call. The other part is, would anybody in that situation have known to call an advocate? Maybe somebody who was well informed



within this particular agency might have. The other question is whether the health care provider, on taking this person in, would have deemed that this person was vulnerable or not.

**Mr J. Wilson:** I think it is a good question for legal counsel. Under the act, dealing in the true-life story that was presented, would the person dying of AIDS have been entitled automatically, as it were, to an advocate? Would he be considered vulnerable even though he had his capacity?

**Ms Bentivegna:** Certainly the act would; the definition of "vulnerable" is broad enough to allow for it. But what should have happened in this situation is that the person should not have been admitted. If they were capable and they were refusing treatment and did not want to be there, they should not have been admitted to hospital.

**Mr J. Wilson:** Which would have been caught by the admission team?

**Mr Sterling:** But that is the way it is now too.

**Ms Bentivegna:** Yes.

**Mr Sterling:** Essentially, if this person had said to the doctor when they arrived at the hospital, "I don't want to be here"—maybe they felt that there was external pressure and that they could not say that.

**Mr Lyttelton:** My experience in this situation is that when people are in the very last stages of their life and two people or groups of people are fighting over them, they will give in to whichever is strongest. Certainly in this situation, the parents seem to have been the strongest. They would just not want the conflict, not want the struggle.

**The Chair:** I believe Mr Chiarelli has a question for legal counsel.

**Mr Chiarelli:** Yes. It is not something that has occurred to me before, but in the context of the previous question, is there an area in this legislation, or I guess in the situations that can occur, where a person would address his or her mind to a "Should I call an advocate or should I call a lawyer" type of situation? You are talking about rights of individuals. You can have, for example, a particular individual who maybe is of means, who has an educational background or a business background, who may become vulnerable. Almost on reflex, if the question of rights comes up, that particular person might be inclined to want to call a lawyer, or somebody else might want to call a legal aid clinic to look at what his rights might be.

On the other hand, we are creating a structure where we have advocates who are also providing, I guess, advice on rights. I am just wondering what your thoughts are or what consideration has been given to any overlap between those particular areas. Is there going to be an overlap where in some cases advocates would be called in and in others lawyers would be called in? I am just wondering, in practice, what might happen under various scenarios.

**Ms Bentivegna:** On the advocacy role, I will defer to my colleague Trudy Spinks. But it would be the choice of someone, if they wanted to call—if both were available, they would make the decision as to who. If it was a legal problem they had, they would call a lawyer. If it was more

of a social, to get a service or to get information as to what was available, for example, they might call an advocate.

**Mr Chiarelli:** But when you get down to short strokes, in terms of advising rights, you are really giving legal advice. There is social and what is appropriate in terms of care etc, but there are also circumstances under which I can envisage an advocate really giving legal advice. Do you see that?

**Ms Bentivegna:** Not if the advocate contains himself to giving the options available in, let's say, services and so on. If they were to give legal advice in the sense of "This is the law; this is your recourse," then they would be giving legal advice. In the sense of saying, "You have the right to take an action in this case or you have the right to do this or the other," I think there is a difference. I do not think that the two roles would—

**Mr Chiarelli:** Do you think there is going to be a grey area there when an advocate might be giving legal advice as opposed to other types of advice?

**Ms Bentivegna:** Hopefully not. Hopefully the training would be clear enough that they would not be giving legal advice.

**Ms Spinks:** I just wanted to reiterate that I think the functions are quite different. In fact, if you look at the Consent to Treatment Act, it does say that one of the functions of advocates is to help the individual, if he or she requests it, to retain legal counsel, not to perform that job themselves.

1510

**Mr Sterling:** It is nice to say that, but the fact of the matter is that in the example you bring forward, there is a confrontation, and people are going to make up their minds on the basis of the advice they have and who is pushing more strongly, as you indicate. I think advocates should give legal advice if they are trained in that area, or whatever it is. I do not know what you quote "legal advice" or "their knowledge of the system"—I think they should use whatever knowledge they have. We have paralegals who give legal advice, and I would hope these advocates would be probably a lot brighter than members of this committee on this law.

**Mr Flanagan:** I would like to support Mr Sterling's point. I would be very disappointed if advocates declined to give legal advice in the circumstances, very basic legal advice that you have the right to refuse treatment. If an advocate would be unwilling to give legal advice of that nature, that you have the right to appoint a power of attorney for personal care—I do not think it would be at all helpful to suggest that advocates ought not to give legal advice in a circumstance of this nature.

**Mr Fram:** Mr Sterling is absolutely right. Advocates in many cases use the law to affect what is done: "You do not have the right to admit this person under the law without their consent or over their objection." So the law is a great part of the advocate's tools. "You cannot deny the service because it is contrary to the Human Rights Code." Those are the kinds of things that advocates do all the time in advocating for services.

I think that certainly is the experience of the Advocacy Centre for the Elderly, which is a community legal clinic with an advocate in it. It gets people's attention when you say, "Where is your authority for this?" and when you take it a step further. That is why most people believe that, just as there is for the adult protective service worker program, there will be a nexus, if not in law then in practice, between the community legal clinics and any advocacy service and people in the field. That is where they will go. That is where they will refer their situations where there is legal advice and legal assistance or the legal aid plan. These things will not exist in isolation. When there has to be an escalation of violence, in essence, or of assertion of legal rights, the advocates will know where to go to ask questions and to get further help for their clients.

**The Chair:** Thank you. Very briefly, Mr Chiarelli.

**Mr Chiarelli:** If I could just add a follow-up, in the normal course, in some of the things they would be doing, they would almost be acting as paralegals in terms of providing advice. Are you—

**The Chair:** Thank you. Mr Malkowski.

**Mr Malkowski:** In relation to the deaf individual you mentioned who was living with AIDS, that certainly has an impact on me, since I have seen members in my own constituency who are deaf and who have come to me and talked about the difficulties in getting interpreters provided by the hospital. Also, the treatment centres or professionals have labelled people incompetent following the word of family members, without having spoken to the person directly.

What recommendations can you see as being necessary? Should we be looking at building in specific recommendations such as training in the areas of communication and so on? I think this is a broad area that affects various types of communication in order to provide correct service.

**Mr Martel:** I think it would be essential that the advocates have certain training that is culturally sensitive to groups of people they are going to be encountering, which might involve them understanding communication styles of different cultural groups.

Certainly for our interests in terms of having a deaf outreach program, it is essential that those coming in contact with people seeking us out, people who are deaf and have HIV disease, be aware of their communication, be aware of their cultural reality, because they are faced with a very complex illness, and without language to be able to understand the complexity of the illness it is a very frustrating event.

The other reality is that it is very important for us that advocates understand gay culture, that they understand that there is an enormous amount of dynamic tension between families and their gay children. The example we provided you of that is not unusual. It is not unusual to have been abandoned by your family for years, and all of a sudden, at the point of your life ending, they rush in and begin to want to do all this stuff. It is really important for us that those things get translated as well.

**Mr Malkowski:** The Advocacy Act, I think, outlines very clearly that organizations such as yours can recommend individuals to sit on the advisory committee, and

that is where I see a really critical role. We are trying to make sure we meet the needs of all individuals by making sure that people such as yourself are represented.

**The Chair:** Thank you, Mr Malkowski. Mr Winninger.

**Mr Winninger:** I think the areas I wanted to explore with you have been adequately covered. I would just like to thank you for sharing your perspective with us. I know you urge a public information campaign in connection with this proposed legislation. I expect your committee could be an ally with the government in getting the message out.

**The Chair:** Mr Martel, Mr Flanagan, Mr Fitton and Mr Lyttelton, I would like to thank you on behalf of the committee for coming and giving your presentation today.

#### RESEARCH ETHICS COMMITTEES

**The Chair:** I call Dr Meslin forward. Good afternoon. Would you please introduce yourself for the record and then proceed.

**Dr Meslin:** Thank you, Mr Chair. My name is Eric Meslin. I am the assistant director of the Centre for Bioethics and an assistant professor of philosophy at the University of Toronto. I obtained my MA in 1985 and my PhD in 1989, specializing in philosophy and bioethics, from Georgetown University in Washington, DC. I am also the associate director of the Clinical Ethics Centre and chair of the research ethics committee at Sunnybrook Health Science Centre. I was research ethics officer of the American Psychological Association and program analyst at the Office for Protection from Research Risks at the US National Institutes of Health.

I am pleased to appear before the committee this afternoon on behalf of several research ethics committees of the University of Toronto teaching hospitals and affiliated institutions. My purpose is to discuss specific provisions of Bill 108 and Bill 109 which refer to research involving incapable persons. These provisions are subsection 47(6) and subsections 56(5) and (6) of Bill 108, and paragraph 1 of section 15 of Bill 109. These subsections are somewhat problematic because they are ambiguous with respect to intention and language and because they omit important procedures currently in place for protecting the rights and welfare of research participants.

I would also, in concluding my remarks, like to offer two recommendations: first, that paragraph 1 of section 15 be omitted entirely, and second, that the criteria for permitting research on patients incapable of consenting be considered separately from this legislation.

In principle, I have to say that sections 47 and 56 are not especially problematic, assuming that it is the intention of Bill 108 to permit research on incapable persons only if an attorney is authorized explicitly through a power of attorney for personal care or court-appointed guardian to consent in this regard.

#### 1520

However, there are at least three possible interpretations of paragraph 1 of section 15 first, that the section is not intended to address the issue of research on incapable persons at all and that the status quo remains; second, that



it intends to permit research on incapable persons only through the mechanisms set up in Bill 108; and third, that it is intended to explicitly restrict research on incapable persons. Even if this last interpretation was not intended, paragraph 1 and the others are somewhat problematic, both because of ambiguous language and because of some difficulties in interpretation for current research.

First, the ambiguity in language: The sections are ambiguous because important terms are not defined, the most important of which is "research." This has been defined elsewhere, for example by the Medical Research Council of Canada, as "the generation of data about persons, through intervention or otherwise, that goes beyond that necessary for the person's immediate wellbeing." Research, therefore, can range from activities such as observational studies to surgical interventions, and from those which offer some prospect of benefit to the subject directly to those designed to gather data, whose value may be to future patients.

Further, both in ethics and, I suspect, in law, it is inappropriate to refer to the power described in sections 47 and 56 as giving consent to research on behalf of an incapable person. Instead, perhaps this authority should refer to giving permission, since consent is an activity that only an individual can engage in. If, therefore, it is the intention to include research on incapable persons under this collection of legislation, this terminology would need to be clarified.

Now to the difficulties in application. There are two that might arise if these sections remain in their present form. The first is that, regardless of when this legislation takes effect, patients who are now incapable and who have not had an opportunity to complete a power of attorney for personal care will be denied the opportunity to indicate a wish to participate in research. Since it is now common for patients such as those with HIV infection or cancer to actively choose to participate in research because it may be one of the best opportunities to get access to new medications, this provision might paradoxically deny them the right to consent in advance.

The second difficulty is that neither bill discusses the process of ethics review of research studies involving human subjects. For more than 45 years, following the war crimes trials at Nuremberg following the Second World War, concern for the protection of the rights and welfare of human subjects involved in research has occurred principally through two mechanisms: codes of ethics that are codified in law in many jurisdictions or at least required by granting agencies that specify their provisions for ethical conduct in research; and second, the evaluation of all research studies based on their scientific and ethical appropriateness by independent research ethics committees. Committees critically assess the quality of informed consent, the risks and benefits of the research to the subject and possible invasions of privacy or access to confidential information.

Since 1975 every major international and national code of research ethics has permitted the involvement of patients who are unable to consent on their own behalf only if additional rigorous conditions are followed. These conditions include: the research must be of scientific importance; it must be impossible and infeasible to conduct the

research on patients who could consent; it is likely that the benefits to the group of individuals with the condition being studied outweigh the impositions on them; the research should focus only on the particular aspects of the condition being studied, and finally, the risks of harm are minimized, including inconveniences, indignities or impositions on privacy or confidentiality.

These criteria are regularly used by research ethics committees within the University of Toronto system and have been proposed by the Law Reform Commission of Canada in its 1989 working paper on biomedical experimentation.

Now a word about the research ethics committees themselves. They are actually made up of many disciplines within the institutional setting. In hospitals, for example, these include medicine, nursing, surgery, pharmacy, psychology, as well as persons trained in philosophy, theology and law. Most committees already include a member from the community, a requirement that is contained in the Medical Research Council of Canada guidelines. I should note that many of the committees—and mine is no exception—regularly must defend their rigorous review process to researchers who believe it takes too long and imposes too many restrictions on research. The difficulty, therefore, is that the legislation leaves unclear the status of these committees and might possibly be inconsistent with existing codes of ethics.

For these reasons, we would like to recommend that paragraph 1 of section 15 of Bill 109 be omitted entirely. In addition, we recommend that the criteria for permitting research on patients incapable of consenting be considered separately from this legislation. Since it is likely this will already occur, on behalf of the chairs of the research ethics committees who are noted I would be pleased to offer any assistance you might require in this process.

I would be pleased to answer any questions. Thank you for the opportunity.

**The Chair:** Thank you. About five minutes for questions and comments. Mr Sterling.

**Mr Sterling:** I think the government was faced with a difficult problem here in paragraph 1 of section 15, and I understand why it would have been tempted to stick this section in because of the kind of horror stories that one can conjure. Somebody who is not familiar with the system in particular might paint and exaggerate the situation.

Has the government, in terms of the three intentions put forward by the presenter on page 2, laid its mind as to which it is trying to achieve by paragraph 1 of section 15? In other words, is it that the section is not intended to address the issue of research on incapable persons at all and that the status quo remains; that it intends to permit research on incapable persons only through the mechanisms set up in Bill 108, or that it intends to explicitly restrict research on incapable persons even if the last interpretation was not intended? Have you decided?

**Mr Wessinger:** I think it has been made clear that the intention of the legislation is not to affect the status quo. I think it is very clear that the intent of the legislation is to leave the common law as it presently exists with respect to the matter of research.



I might just add while I am speaking, are you aware that the ministry has appointed Professor David Weisstub to do a report on this matter? I certainly would suggest that you make your submissions to Professor Weisstub with respect to the matter. I think really that addresses your question of being separately considered because I think it indicates it is being separately considered.

**Mr Sterling:** Are you then telling us that paragraph 1 of section 15 will not be passed, because if you want to maintain the status quo then there would not seem to be a need for paragraph 1?

**Mr Wessinger:** In the opinion of legal counsel—I think she expressed that opinion—paragraph 1 of section 15 does not affect the status quo. That matter will be reconsidered with counsel, but certainly it is the present opinion of counsel for the ministry that it does not affect the status quo. However, if it needs some clarification I am sure that can be looked into. I think ministry staff might have something to add.

1530

**Ms Auksi:** Could I just add a word of clarification? The legislation does apply to consent where the patient involved is mentally capable. So what this section does is make it clear that the substitute consent provisions in this act are not ones that could be used to authorize research involving mentally incapable individuals. The provisions of this act cannot be taken to authorize research involving mentally incapable individuals. If there is such authority in common law, then it remains. Whatever is the common law situation remains in effect.

**Mr Sterling:** My concern is that you are the second witness to raise this issue. If the interpretation is there—I do not know whether you have had any kind of legal opinion on this section—certainly our job as legislators is not to confuse the law but to try to make it as clear as possible. It is not easy always, but if that is the intent of the ministry, having heard the response, if you can suggest something in between which is more comfortable to you, I invite you to do that for us.

**Mr Chiarelli:** Can I ask one question? I do not understand the information that has been given for why paragraph 1 of section 15 is there. I wonder if somebody could take another run at me to see if I can figure it out, maybe say it in a different way. I just do not understand why it is there.

**Mr Wessinger:** I was going to have counsel explain, if that is satisfactory.

**Mr Chiarelli:** I know you did it this morning and you did it again now, but I am still having a bit of trouble following it.

**Ms Bentivegna:** The reason section 15 was put in was that we wanted to make it clear that the substitute decision rules set out in this legislation for incapable people cannot be used when the decision to be made is whether an incapable person is going to take part in, for the first example, a research project that is not therapeutic, that does not have any medical benefit for that particular person. The reasoning was that that is a special case that needs to be studied

further to see if there need to be other rules set up around that type of consent.

**Mr Chiarelli:** Can we be very specific? Dr Lowy mentioned this morning that it is a common feature and accepted within certain restrictions that someone who is incapable and who has a guardian or a substitute decision-maker as it is now regularly gives consent for research or treatment to that individual, whether it is therapeutic or not. Are you saying that the status quo is going to stay the same as you have just explained it?

**Ms Bentivegna:** Basically what I am saying is that, yes, if the researcher feels that he or she is obtaining a valid consent from someone who is authorized—because right now, the only rules that exist are common law—then that would continue.

**Mr Chiarelli:** Are you saying that it has to be specified in the legal document which gives the authority to a substitute decision-maker that they can participate in experimentation?

**Ms Bentivegna:** I think that right now a lot of it is being done informally. I do not think there is legal authority because most people do not have guardians under the Mental Incompetency Act.

**Mr Chiarelli:** I think you are just admitting that it does give the effect which gives rise to the concern of Dr Lowy and this particular presenter. I think what you are saying is that there must be something in the authority or the power specifically saying that experimentation can be permitted. Otherwise, under this legislation, it is not permitted.

**Ms Bentivegna:** All we are saying is that this legislation, Bill 109, cannot be used as authority for giving that kind of consent. If there is such authority in any other legislation or in the common law, then fine, that authority will be used, but what we are saying is that the rules in Bill 109 do not authorize that type of consent or permission.

**Mr Chiarelli:** I would suggest that you are creating a conflict of laws here, or a confusion in the legal situation as it presently exists. I really want to reiterate the concerns of Dr Lowy and this particular presenter, because as it has just been explained by both of you, I think you are changing the common law. I think you are putting in a provision which limits or restricts the area where experimentation authority can be given, as you have explained it and I think as was explained over here. Unless you can be a little more specific on what the intention is here, I think the confusion is going to continue.

**Mr Sterling:** I would like counsel to stay there for a moment and I would like to get this clear. If I am interpreting correctly what is coming back, you are telling me that if there is a guardian, the guardian cannot okay research on an individual unless the individual is going to benefit personally from that research. In other words, it is cancer or it is—

**Mr Chiarelli:** It is therapeutic.

**Mr Sterling:** It is therapeutic. That is the intent?

**Ms Bentivegna:** That is my understanding of the law as it is now, and I guess what this is saying is, "We're leaving that."



**Mr Chiarelli:** It is not Dr Lowy's interpretation of the law.

**Mr Sterling:** I guess my problem is that I do not disagree with the intent and the way it is. My concern is that there does not seem to be any distinction in the definition between research which is therapeutic to the patient and research which may be something else.

**Ms Bentivegna:** The reason for using the wording "whose primary purpose is research" rather than "whose primary purpose is treatment" is because treatment is being defined and all the rules of how treatment can be given. That is the distinction, treatment being the therapeutic. Anything outside of that, you know, those three others we have listed, is considered not to be treatment.

**The Chair:** Thank you, Mr Sterling. Mr Wessenger.

**Mr Sterling:** Did the doctor want to respond?

**Dr Meslin:** I am enjoying the discussion so far, but—

**Mr Sterling:** I am sorry.

**Dr Meslin:** Perhaps I could at least offer an observation. I am just a philosopher, not a lawyer, so I do not want to wade into interpretations of the law. I think my colleague Professor Dickens, who will be speaking after me, might be more appropriate to comment on that. But as chair of a research ethics committee operating in Canada, I can tell you that we have complied with not only local requirements for the review of research studies which permit the involvement of persons who have a diminished capacity to consent. I think, as is known to the members here, competency is not a threshold concept, all or none. One can be more or less competent to consent to various procedures.

As I attempted to indicate in my remarks, research should be regarded as part of a large spectrum, from observational studies which are conducted regularly involving, for example, patients with various dementias, Alzheimer's being a particularly acute example, where there is no intervention at all and may not be for their direct therapeutic benefit. Where there is no breaking of the skin, research ethics committees across Canada have permitted such experimentation, such investigation, to occur. This is consistent not only with local hospital regulations, but also with U of T guidelines and Medical Research Council of Canada guidelines. I would perhaps draw your attention to pages 30 and 31 of that document to clarify the status of research involving incompetent adults in Canada.

**Mr Wessenger:** I would just like to clarify your last statement. Is it fair to say you are telling us that in Ontario right now, non-therapeutic research is being done with respect to people who are incapable? Could I have an answer to that question?

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**Dr Meslin:** Yes, I would be happy to answer that question. I think the distinction between therapeutic and non-therapeutic research is a bit of a non-starter. It is a bit problematic. Not all research can be divided into interventions that would not benefit the patient as opposed to those interventions that will benefit the patient. Many studies are investigations where there is a possibility the patient will benefit, but the principal intention is to gather data that

may be of use to others. When I talked about oncology studies, that is a very good example of a situation where a new chemotherapy agent may or may not benefit that particular individual at that particular time, depending on, for example, whether the patient is enrolled in a study comparing two drugs, one more and one less effective.

I do not mean to change your question around, but I think we need to get away from the distinction, which is a very blunt instrument, between non-therapeutic and therapeutic research. The spectrum is very wide and investigators across the country are trying to deal with it. A distinction I would use or support is between interventions that are designed specifically to benefit the patient. There are innovative therapies and there are experimental therapies and experimental interventions, not as clear-cut a distinction as may be described here.

**Mr Wessenger:** If I could just follow that up, what you would argue then is that the research presently being done—all of it, you would say, from your perspective—would have a therapeutic concept in the sense that it might have had a possibility of benefiting the person receiving it. Is that what you would say?

**Dr Meslin:** I would not say all, but the vast majority of research that any committee at any institution I have been affiliated with would approve. Clinical studies, for example, are studies that will at the very least—we are talking about incapable persons, not persons who can consent on their own behalf to very risky research. We are talking about research that carries a low threshold of risk—in fact, minimal risk is the standard we use in committees—that will have no prospect of harm or very little prospect of harm. Those are the kinds of studies that perhaps a misinterpretation of language here could stop or threaten.

**The Chair:** Ms Akande, you have one minute.

**Ms Akande:** I do have a question, because there was a presentation earlier today from Frederick Lowy in which the non-therapeutic and therapeutic distinction was made. I was given to understand that these two categories were used in order to decide whether the research that would be done on someone who would be vulnerable, who might require some support, or unable to make decisions, would be divided into these two categories and that the person would then be treated differently according to the category in which he or she fell. Is that not correct?

**Dr Meslin:** I think that is fair, and maybe there are some semantic difficulties. For purposes of the legislation here, concerned with the way it may restrict research, given the concern of research ethics committees, I think the rule, the ethical principle we use, is that you should not enrol patients who are incapable of consenting on their behalf in research that at least does not benefit them and at worst harms them. The goal, of course, is to enrol them only in research that creates the very minor risk of harm but is outweighed by the possibility of benefit to them. In that way, yes, I think that is a fair distinction.

**Ms Akande:** So the categorization does apply, and does apply in the decision-making.

**Dr Meslin:** I think it applies, as I said, as a blunt instrument, and as each individual protocol is reviewed, to



try and assess the harms and benefits to the individual, which may be a mixed bag.

**The Chair:** Dr Meslin, on behalf of this committee I would like to thank you for taking time to come and give your presentation.

HUMAN SUBJECTS REVIEW COMMITTEE,  
UNIVERSITY OF TORONTO

**The Chair:** I will now call forward Professor Dickens. Good afternoon. Would you please identify yourself for the record and then proceed.

**Dr Dickens:** My name is Bernard Dickens. I am a professor of law at the University of Toronto and chair, and speaking on behalf of, the Human Subjects Review Committee of the university. I appreciate the opportunity to be here and regret that I am going to take you back into the morass of paragraph 1 of section 15 of Bill 109.

First, though, I think it important to recognize the initiative the other ministry has promised to undertake, a separate study of medical research on persons incapable to consent. The university certainly appreciates the need for this inquiry and will be very happy to collaborate with Professor David Weisstub and with any other research initiatives the Minister of Health considers appropriate.

I want to put the issue of research in a slightly broader context before focusing on paragraph 1 of section 15, with which you are already familiar. There has been an interesting movement in the context within which medical research is assessed. That is, it was not too long ago that the imagery was essentially a Frankenstein imagery, a One Flew Over the Cuckoo's Nest imagery of demented, irresponsible people doing tormenting things to the vulnerable. Although we would like to think that is not a prevailing reality, it serves to warn us that it might be and that it might become such and the need for protections clearly exists.

On the other hand, there has been a dynamic of which I think one ought to be conscious. That is, we now have populations, such as people living with AIDS, demanding research and demanding that they be admitted to research protocols. We also have interest groups on behalf of those with Alzheimer's disease and those with juvenile onset diabetes demanding that research be done. We also have a phenomenon of women's groups complaining that in the past women have been precluded from ethical research protocols on what seemed at the time to be ethical grounds, and the result is that there are products that women are now taking on prescription or buying over the counter that have not been tested on women with regard to efficacy or safety of dosage levels and we have women's groups requiring that research be done on medications to test their effectiveness and their safety for women.

The idea that research can only be harmful and is better not done than done on grounds of safety is a concept we have moved beyond, in that we now have a perception that not doing research can be harmful to vulnerable target groups. To that extent, then, we have to explore the law under which research can be done, and that exists under the general law. Having heard the earlier discussion, I acknowledge the intention of the legislation to leave the

general background law unaffected by Bill 109 and to postpone the consideration of new laws to the report of the Weisstub committee and perhaps to other recommendations that may be made.

I am going to propose, and you will see this in the opening recommendation of my brief, that paragraph 1 of section 15 does not achieve that intention and in fact is seriously dysfunctional.

The general law is restrictive, and I think attention could be drawn to a distinction that was not addressed in the discussion just concluded with Dr Meslin in the context of paragraph 1 of section 15, because section 15 reads—I am certain you are familiar with the language—"Nothing in this act authorizes a health practitioner to perform any of the following procedures on a person who is incapable..." and the focus is on procedures on a person.

Much research does not involve procedures on a person. Much research is involved with such matters as retrospective file examination, which will identify the individual and in that sense violate privacy, but not represent any intrusion on the person's physical integrity.

The existing law is very restrictive regarding the physical intrusions that can be undertaken in the cause of research. The leading decision here is a unanimous decision of the Supreme Court of Canada in 1986, the Eve decision, which is the source of our proposition that those who are guardians of the mentally incompetent, whether they are incompetent due to disability or simply immaturity, young years, can employ their powers only to authorize intrusive procedures that are beneficial.

This leaves a margin of uncertainty because there are procedures that are not beneficial but are not harmful either, such as touching people, fitting electrodes, for example. They would come within the concept of the risks of everyday life, that is, what parents can authorize for their children. They do not go to the extent of drawing blood, which would be intrusive, but they would not necessarily be beneficial.

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There is a margin of uncertainty about quite what the Eve decision means with regard to procedures that are not intrusive but that would otherwise, and with consent, constitute assault both in civil law and under the Criminal Code. But with regard to procedures that are invasive, and I would include routine blood sampling in that category, the Eve decision is very restrictive, indicating that intrusive procedures cannot be undertaken other than on beneficial grounds. In a therapeutic context we would include diagnosis and routine monitoring of therapy, but anything that is purely for research or that is more research than therapy would be precluded by the Eve decision.

The existing legislation is very restrictive. Whether it ought to remain as restrictive as it is, whether it might be liberalized, as many investigators would urge, is something that will probably be encountered when the Weisstub committee report is received. There seems to be a tenable argument that, in law, provincial legislation could authorize guardians to give consent to procedures that would have the effect of rendering them lawful under the federal Criminal



Code, although obviously that is something that will eventually have to be tested.

The existing general law then is restrictive and investigators may want to address you independently on that. The effect of Bill 109, however, is to impose an even more chilling impact upon the initiatives that researchers think they can take because the language, I think inadvertently, links research with two other procedures that are demonstrably illegal.

If we look at what accompanies section 15, paragraph 1 of Bill 109, that is section 15, paragraphs 2 and 3, they deal with two procedures that are unlawful. Paragraph 2 deals with "sterilization that is not medically necessary for the protection of the person's health." The 1986 unanimous decision of the Supreme Court of Canada makes it clear that is unlawful and cannot be undertaken on the consent of a guardian. Paragraph 3 addresses, "the removal of regenerative or non-regenerative tissue for implantation in another person's body."

The provincial Human Tissue Gift Act is definitive on this. It begins by stating that nothing can be done by way of organ donation that is not authorized by the act. The act then goes on to say that donations from living people can affect only those who are aged over 16 years and who are mentally competent. So it is clear that non-regenerative tissue or certainly organ donations—I will not go into the distinction between tissue and organs unless members of the committee wish—would be unlawful from mentally incompetent people.

The difficulty we then face is really one of legal drafting. It is almost a point of statutory interpretation. It is one of those legalistic points that lawyers like to apologize for before they get into them in detail. There is a rule of construction of statutes that clauses will take their meaning from what accompanies them.

That is, they are not read in isolation, they are read in context. The context of section 15, paragraph 1 is obviously section 15, paragraphs 2 and 3. Paragraphs 2 and 3 both address issues that are clearly unlawful and the inference is therefore invited that research addressed by paragraph 1 is also unlawful. In that sense the bill is not neutral with regard to the status quo.

If its intention is to preserve the status quo, the embodiment of that intention in section 15, paragraph 1 will be ineffective and, worse, dysfunctional. My recommendation is that if section 15, paragraph 1 is not omitted, then at least it be redrafted separately from paragraphs 2 and 3 in the language that I have indicated in my brief.

The harmful effect of section 15, paragraph 1 is already being felt; that is, section 15, paragraph 1 is having a chilling effect on the research initiatives that the research community feels it appropriate to take because of the fear that the research they are proposing will become unlawful or indeed that it already is unlawful. The existing parameters of legitimate research are being narrowed, I feel inadvertently in view of the minister's prior statement, by the language of section 15, paragraph 1.

This is especially costly at this time because the research communities of the universities are struggling to retain their first-rate researchers. Training and recruiting and retain-

ing researchers is becoming more burdensome, and you will be aware of the fiscal restraints under which the universities anticipate having to operate in the future.

If researchers feel that not only will they have to cope with the shrinkage or at least the stabilization of resources that are in prospect, but also the fear of added liability to legal proceedings, which could be civil proceedings for malpractice or criminal proceedings for assault or disciplinary proceedings before a provincial licensing authority, the College of Physicians and Surgeons of Ontario, then they will either forgo research careers and choose to be clinicians or they will pursue research careers elsewhere. The history of a university is that when good researchers are attracted elsewhere they do not come back.

In that sense, section 15, paragraph 1 of Bill 109 is already doing harm, in that research is being deterred which is lawful under existing provisions because this pall of doubt and fear is being introduced by language which I am certain is not the intention of the legislation. This is not a neutral measure. It is causing disadvantage.

I would therefore like to take the opportunity to recommend either that section 15, paragraph 1 be omitted from Bill 109 or that it be expressed in different language, separated from the two illegal procedures, perhaps in language such as I have proposed, that nothing in this act changes the law affecting a medical procedure whose primary purpose is research proposed on a person who is incapable of consenting to the procedure. Thank you, Mr Chairman.

**The Chair:** Thank you, Mr Dickens. We have approximately five minutes for each party to ask questions. Mr Chiarelli.

**Mr Chiarelli:** Professor Dickens, you indicated that section 15, paragraph 1 uses language which you are sure is not the intention of the drafters. Can you tell me from your reading of the section and from what you have heard here today what is your assessment of the intention of the draftsman who drafted this or of the government in bringing it forward?

**Dr Dickens:** I take the intention from the earlier statement of the minister in introducing the bill to say that its purpose is not to affect research regarding those who are not competent to give their own consent, but that is a matter that is pending further inquiry and will be dealt with subsequently.

**Mr Chiarelli:** Why is the section there?

**Dr Dickens:** I think it is there for the avoidance of doubt, as lawyers say, but it links section 15, paragraph 1—it is not so much the language of section 15, paragraph 1; it is the context that it is linked to two clearly unlawful procedures. The inference is that section 15 deals with three unlawful procedures.

**Mr Chiarelli:** Is it your understanding, quite apart from the legal context, that the government would not want to change the existing situation with respect to non-therapeutic experimentation?

**Dr Dickens:** Yes, that is my understanding.

**Mr Chiarelli:** As indicated by Dr Lowy this morning?

**Dr Dickens:** Yes, I think that is what is intended. This form of drafting does not achieve it.

**Mr Sterling:** I am concerned with your latter statement as to the effect the bill is having at this stage on, I guess you would almost call it the morale of medical research in terms of what is going on here. Is there any other evidence that you have that researchers are in fact looking at section 15, paragraph 1 and saying, "This is going to restrict our ability to conduct research"? Is that anecdotal, the information you are saying, or have you talked to other people in other universities about this?

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**Dr Dickens:** Yes, it is anecdotal and it can only be anecdotal in that, as participants in the processes reviewing protocols, we can only review the protocols that come forward; we cannot review the protocols that researchers choose not to develop.

**Mr Sterling:** I think everybody acknowledges there is a problem with section 15, paragraph 1. In fact, if it is having an immediate impact on the attitudes of people here in the province who are involved in medical research—and you might not be able to do this on your own at this time—would it not be most prudent for the minister to say that paragraph 1 will not stay and we may in fact replace it with something else? The argument has been used that we are going to talk about other sections and all the rest of it. That argument is valid if the legislation in its present form is not having an effect, but we are hearing witnesses today who are saying that paragraph 1 is having a negative impact on our research community. If we accept that, then surely there is an onus on the minister to indicate intention at this time with regard to that section.

**Mr Wessinger:** The minister has clearly indicated her intention with respect to the legislation to not affect the existing situation under common law, and I assume that matter will be looked into from a legal perspective and will be considered.

**Mr Sterling:** That is fine and dandy to say, but why do you not be clear about it and just say section 15, paragraph 1 is not going to stay?

**Mr Wessinger:** I think to be fair, Mr Sterling, it is a matter of a legal decision as to what the most effective way is to make clear the intention. It is obvious that various lawyers may have different views occasionally, but the intention is the same and certainly I would like to assure Mr Dickens that the intention is not to restrict the common law situation with respect to the bill.

**Mr Sterling:** But we are having evidence which is saying that everybody believes it does restrict. Why do you not say—

**The Acting Chair (Mr Fletcher):** Excuse me, Mr Sterling. The purpose of this is not to have an argument across the floor.

**Mr Sterling:** Sure it is.

**The Acting Chair (Mr Fletcher):** It is to listen to presentations. You have heard the clarification and there is no need for an argument. That is all I am saying.

**Mr Sterling:** Sure it is.

**Mr Wessinger:** The only thing I would like to say is that we are all lawyers and we all may have different interpretations of what somebody may say. This is always true with legislation.

**Mr Curling:** There are too many lawyers in this room.

**Mr Wessinger:** Just for my own clarification, Professor Dickens, because I am trying to understand this point, I would like if you could clarify for me what legal authority now exists under common law or otherwise for a substitute decision-maker to consent on behalf of an incapable person with respect to research.

**Dr Dickens:** The distinction would have to be drawn between invasive and non-invasive procedures. The law traditionally has not distinguished different functions of guardianship. Guardians have had the capacity to stand in the shoes of the individual, and certainly historically one understood that guardians could approve certain procedures that were invasive in the fairly generally way; that is, the proposition was that if the individual was not competent to make his or her own decision, then a lawful guardian could discharge that function.

But the Supreme Court court in the Eve case made it clear that the limit of that power is functional; that is, guardians do not have powers to do anything that people who are competent can do for themselves. They merely have the power to discharge their functions and their functions are to secure the wellbeing of the individual and advance therapeutic interests. They have no power to do things that are not beneficial. They have no power to use their legal control of a dependent person for any agenda or advantage of their own or of their parties.

In that context the Supreme Court precluded a sterilization procedure on a mentally incompetent woman because of the degradation on her physical integrity, even though the court was aware that might open up social opportunities for unchaperoned time with members of the other sex. The court took a very restrictive view saying that the highest value is the preservation of physical integrity and guardians could not use their power to authorize the violation of physical integrity in ways that were not for the benefit of the person intended to be directly affected.

**Mr Wessinger:** So basically a guardian could only consent—just say if I am correct—to a research project with respect to an incapable person which did not invade his physical integrity.

**Dr Dickens:** Yes, by which I would take authorization of file inspection or perhaps running additional tests on a blood or urine sample already taken for therapeutic or diagnostic purposes. That violation of privacy I think could be authorized again within limits, but no physical touching and no blood testing.

**Mr Winninger:** I wonder whether subsection 47(6) of Bill 108 might alleviate your concern to some extent in that it states "Unless it expressly so provides, the power of attorney does not confer authority for the attorney to consent to a procedure whose primary purpose is research."

**Dr Dickens:** Yes, I think that is appropriate regarding a person who has been sufficiently competent to execute a



power of attorney. If that person did not expressly opt into research, the attorney is not empowered to do so. I think that is consistent with the common law position regarding those who are not mentally competent.

**Mr Curling:** I want to ask the parliamentary assistants to consider this: It is consistent in the last two days that section 15, paragraph 1, is causing a lot of problems. Since we are all cooperating in a non-partisan situation, I wonder if you could maybe come back tomorrow after discussing this of course with the minister and the legal department, and they could consider taking out section 15, paragraph 1, since it has immediate negative impact on the situation.

**Mr Wessinger:** I think we all know the appropriate time to deal with that or appropriate amendments is at clause-by-clause.

**The Chair:** Professor Dickens, I would like to thank you on behalf of the committee for taking the time out and giving your presentation.

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#### MARGUERITE YOUNG

**The Chair:** I would like to now call forward Marguerite Young. Good afternoon. I would like to welcome you here. Could you please identify yourself for the record and then proceed.

**Mrs Young:** I am Marguerite Young. I live at 282 Burnham Street in Peterborough. I am a mother of a schizophrenic son. I have brought my other son, Charles Young, who is a controller for Cardinal Corrugated Containers, Pickering, with me as family support.

I am here today as a very concerned mother of six grown children, one of whom is a son of 31 with severe paranoid schizophrenia. You have no idea the burden of responsibility I feel here today to represent families similar to my own. This is not a burden that has been placed upon me but one I have placed upon myself, because in my 10 years of dealing with this disease I have met so many families who feel inadequate to speak publicly for themselves or for their loved ones.

As I hold a master's degree in education, I feel compelled that those of us who can speak must do so, and speak with the conviction and the knowledge we have gained through our years of experience in coping with schizophrenia. I reflected and I worried many hours and many days wondering what I should say to you today and how much I should say to touch your hearts and minds so that you would scrap this legislation or at least make major changes to it. Touch you I feel I must because what you decide will affect not only my son and my family but many others for life.

If I become emotional, you should not interpret that to mean that what I am saying is not rational, logical or well reflected upon. One can be rational, logical and reflective but feel so strongly about the issues as to become emotional.

I have spent much time studying Bills 74, 108, 109 and 110. Even with legal interpretation, one must conclude that in their present form they present insurmountable obstacles

for the families of those who care for their relatives and want to remain involved in their lives.

The family unit has always been the central social institution of society and the anchor of the community. It is the substance of the past and the wellspring of the future. It remains still the major institution and backbone of the country. Why would a government discourage and disable the family unity rather than encourage and enable it to continue to function as a unit?

Who would know best what decisions are best for the seriously mentally ill, a public advocate with no relationship or no real understanding of the disease or a committed family which has suffered along with its relative and, through years of experience, gained a knowledge of and insight into this disease that exceeds even that of the professionals? It is the family, and only the family, that knew these human beings before they became ill. It is only the family that knew what they thought, what their values were and what they wanted for their lives. I cannot emphasize this point enough. What they might say they wish after they become ill is affected by the illness. It is affected by the delusions, the hallucinations, the severe paranoia and the damaged processes caused by this disease.

If you are a Christian or have studied Christianity, you will know that Jesus was one of the greatest teachers of all time. He taught by story, and so I am going to tell you just a little of my story today. If you were to hear all the stories of the families across Ontario, mine would not be the worst. I am merely using part of mine as an example of the suffering and hardship families encounter with the system as they struggle to act in the best interests of their loved ones.

My son Fergus's schizophrenia became full-blown at the age of 21. One of his fixed delusions includes his belief that he has a rupture in his stomach that doctors here cannot find because they are mind-controlled by the RCMP, the CIA etc. If he could get to a Third World country where the doctors were not controlled by these agencies, then they could fix his stomach and also prove that he had been poisoned all his life. He believes that he has implants in his ears and that through these implants he receives messages he cannot interpret. He believes that raw meat is easier on his ruptured stomach than cooked meat and that therefore he should eat raw meat. He believes that he will be an important figure in a Third World confrontation and will be killed in this but that in the process he will have to kill me. He believes that I and others have been poisoning him all his life and that I should be killed.

I could speak volumes of the implications that these delusions have had on Fergus's wellbeing and our ability to care for him, but I am not going to address that today because it would take a day and I guarantee I would have you weeping in your seats with me. When a psychiatrist can find a medication that stabilizes his chemical imbalance to a degree, then the delusions, even though they remain fixed and there, sink into the background and are not acted upon. This can be a very long and difficult process, and better medications are desperately needed. It is my contention that if the government were to direct the moneys it

will need for public advocates to research, both the monies and society would be much better served.

I wish now to speak to you about the susceptibility and the vulnerability of those with schizophrenia. In the process of time my son has been in and out of many psychiatric institutions: the Peterborough Civic Hospital's psychiatric unit, the Clarke Institute of Psychiatry in Toronto and Kingston Psychiatric Hospital. He has needed to be involuntarily committed for a considerable length of time. The last period was for over two and a half years. He was desperately psychotic, was a danger to himself and others and had absolutely no insight into his condition.

As you know, a patient can appeal his committal at any time, but not once did Fergus ever ask for a review board until a patient advocate would go to him every three months to tell him that he was being recommitted and that he had a right to a review board. Fergus is an intelligent young man. He has a year of science from the University of Guelph and a half-year of business college. He knew he could ask for a review board, but he never once asked for one until he was visited by a patient advocate.

At that time you only had to look at or to talk to him to realize how desperately ill he was, but every three months I had to go through this very painful review board process, and at a tremendous cost to the province. Each time there would be a new board, so each time I would have to sit there in front of a group of strangers and my very ill son and give personal evidence that would help have him recommitted so that he could get the help he needed and not hurt himself or someone else. I wonder if you realize how difficult it is to sit across the table from a very ill son and cause him more unnecessary pain when he has suffered so much.

During this time, when Fergus was visited by a patient advocate and asked for a review board and legal aid, he was represented by an individual who had been a patient advocate in a psychiatric hospital before he became a legal aid lawyer. At this hearing Fergus was visibly psychotic. He could not even remain at the hearing. He came in at the beginning and then he was brought back in at the end. This hearing lasted for five hours with no lunch. It began at 9:30 in the morning in a very draughty room. We broke at noon for about 10 or 15 minutes, but as there was only cold coffee, we continued.

Over three hours of that hearing was spent in a legal battle between the legal aid lawyer and the chair over legal technicalities that had absolutely nothing to do with my son's wellbeing. One such argument was that the former committal paper had run out at midnight and was not re-signed until some time that day, so therefore it was illegal.

My son's best interests were not the issue. Two psychiatrists, not one, had testified that Fergus met all three requirements of the law. Up to this time and through many review boards, when Fergus was asked by the committee, "If we let you out tomorrow, will you take your medication?" he would answer that he would not, even though he knew what that would mean. As a mother, you could not help but feel good and feel proud of him, but at the same time you could have cried for him too. You were just constantly being torn in two. But at this hearing the lawyer went out

and spoke to him in the hall. Fergus came into the review board and said that he would take his medication, even though he had told me that morning that he would not and later on at the hospital that day said he would not. You felt so very sad that he had lied, because you knew this was what the system had done to him. The review board upheld that committal.

1620

As you know, if there is to be an appeal it has to be filed within two weeks of the decision. Two days before that time was up I got a call at school from the legal aid lawyer asking me for an extension as he wanted to launch an appeal. He began by saying in a very friendly little voice that this is what lawyers do for each other and that as I had equal-party status, "You know, if you want to be one of the boys or one of the club, you will do this for me," and that he had already talked to the ministry lawyer representing KPH and that she had agreed to do this. I told him that what he was doing was morally and ethically wrong and that if he just talked to Fergus or looked at him, he would know that what he was doing was wrong and that he did not have his best interests at heart. As his mother I had to do everything I could to stop him. Therefore, I would not grant him the extension.

The mood changed to if I did not do that, then he would haul me into court to have it extended, and the judge always did that anyway, and because I was causing it, he would ask that I pay the costs. Mind you, I have no legal experience and I was frightened. I did not know what the costs would be or if I would have to pay them, but I felt I had to persist because I had no alternative. He said I would be served that night at home.

By this time I was crying. I was in the staff room and this was witnessed by another staff member. I did not know what to do. I phoned the lawyer for the hospital and she said that she had not said whether she would grant it, but that as counsel for the hospital she could not act for me and could not give me any advice. I am a vice-principal in an elementary school in Lindsay, but I live in Peterborough.

I know this is going to sound like a grade B movie, but I want you to just try and put yourself in my shoes at that time and in my state of mind. I am driving down the highway and I am frantic, wondering what I can do. The thought came to me that maybe if I did not get served that night or the next day, he could not launch the appeal. I got to Peterborough at about 7 o'clock. I had had no dinner. I drove by my lawyer's office to see if he might be working. No such luck. I drove by a couple other lawyers' offices to see if any light was on there. No again.

Anyway, I decided, "I'm going to avoid the server tonight until I can get some legal advice." I drove up and down my street a couple of times to see if there was a car parked there with somebody in it waiting to serve me. I looked at the porch and I looked at the driveway. I saw no one, so I turned off the lights, drove in behind my house and sneaked up to the back door. I unlocked the door in the dark and crept in, leaving all the lights off. When I got in there my answering service light was on and it was the lawyer saying that he had decided not to appeal at that time. I can tell you, I collapsed into a chair and wept, but I



did not rejoice because I knew he was just waiting for next time.

Again next time the patient advocate visited Fergus when his committal was to be renewed and again he asked for a review board. He was represented by the same legal aid. This hearing took a similar pattern to the last one. The committal was upheld but this time the decision was appealed to the district court. Fergus's condition had not improved at all; in fact, it was a little worse. I decided to represent myself with no legal experience, but my son went so often to review board that at the approximate cost I had been given of about \$1,000 a day to have someone in Kingston represent me, I felt that if this was going to be a continuing pattern, I just could not afford counsel.

The lawyer's reasons, according to the act, had to be served within an allotted period of time. His were served several days late. I served what was called my factum within the allotted time of seven days. Again I received a call from the lawyer telling me he would not accept my factum and he wanted me to write another one. I had put in my factum that he had coerced my son into filing an appeal, which he had. I felt he was trying to get me to serve my factum late, as he had, so I refused. While I was dealing with this, Fergus threw himself in front of a van and tried to commit suicide. This was his third attempt. He was hospitalized with a broken pelvis and severe bruising.

Anyway, the lawyer took me to court to have my factum thrown out. I drove all the way to Kingston in winter weather, another day off work. The lawyer asked to speak to me in the hall and said it was really important. He took me down an empty hall. He started out friendly at first, saying he wanted me to agree to write another one because of what I had said about him and that it was not acceptable. I said I was willing to let the judge decide and to strike out anything that was not acceptable.

Next he changed the mood to a little angrier, saying he had a doctor's appointment that day and he could not proceed anyway and that I should feel sorry for him. I again stated that what he was doing was morally and ethically wrong in my opinion, he knew how bad Fergus was, he did not have his best interests at heart and I had to continue to do everything I could to stop him. He had absolutely no regard for my son's suicide attempt. He became angry at me again, started yelling at me that he would have it thrown out anyway and I would have to pay the costs. Believe me, I was frightened again. I did not know, but I felt I had to put up a brave front so he would not see how scared I was.

I jumped up and said, "I'll let the judge decide." We went in front of the judge and butter would not melt in his mouth. He apologized to the judge and said he could not proceed because my factum concerned him, his partner was ill and could not come. I protested that I had come so far and taken another day off. The judge apologized but said he had really no alternative, so the following week I had to return again. This judge agreed to go through my factum and strike out anything that was unacceptable. Of course this was only the preliminary. The appeal itself followed. Fergus's committal was sent back to another review board and the cycle started again.

Does this give this committee just any idea of what I have had to go through to try to do what is best for my son? Having a family member with severe paranoid schizophrenia is a tragedy in any family. All the family members suffer. That suffering should be enough. No mother should have to suffer the additional suffering that I went through with overzealous rights people. I firmly believe that if Fergus's family had not remained involved and still remain involved, he would be dead or perhaps have killed someone or both.

Your advocacy bill gives too much power to advocates with no accountability. Advocates will not know these people before they were ill. Families were there before, and God willing, if the system does not kill them, they will still be there. Your bill does nothing to help them remain involved. They should be encouraged to take part in review boards and in every decision made regarding their loved ones. You should be strengthening the family unit, not breaking it down. In your legislation, rights groups and survivor groups have a prominent place, but not us. I want to know why not. We are only incidentally mentioned. You allow survivor groups to speak for all mentally ill and they cannot, because they were never severely, chronically mentally ill and their experiences cannot be compared. Let them speak for their own group, all well and good. I am for that. But they cannot speak for all. They should not because they cannot. Only families can speak for the severely chronic, and they should have just as prominent a place in any legislation.

You have before you my recommendations. My greatest wish would be that you set this legislation aside and start over and put the money that public advocates will cost you into research. I believe Dr Philip Seemans said that research time could be cut in half if it had enough money. If you proceed with this legislation, families and friends of schizophrenics who represent families must have a prominent place in every step of the decision process. Advocates should have a certificate of proficiency to assure that they have an understanding of the disease. There has to be an accountability process. Definition of terms must be the same in all pieces of legislation so as not to leave them open to loopholes and different interpretations, and there has to be a process whereby seriously ill schizophrenics can get help immediately because of the crisis nature of this disease. It is a unique disease and you cannot release patients to the community without housing and support systems in place. At present, it is in an abysmal state. Thank you.

1630

**The Chair:** Thank you very much. Very briefly, Mr Curling.

**Mr Curling:** Mrs Young, you are a very courageous woman to share your story with us here. It was only for maybe half an hour, and I have just lived a life for half an hour and I am not quite sure if I could live it for an hour. You have been living it almost all of your son's life. We go back upstairs or somewhere and answer a phone and move on to the next issue, while you go home and deal with the issue itself. You have taken on a bureaucracy that is much

more financed and equipped than you. You should say you are a strong woman because you are here today to tell that story. I just hope that all committee members, especially the government side, listened very attentively to what you have said.

I have one small disagreement with you. I would say there is a need for advocates and I am glad in your recommendations that you actually say that, but you said "with proper guidelines and proper structure." Most of these recommendations have been said to all governments, from the Conservatives to the Liberals and now the NDP government. There must be important things put in place, especially the last one. You must have formal support before you send people outside to be in the community after an institution. Some people feel that it does not cost money, but it costs lots of money to do so, so we must be very careful.

As you said that, as you were telling your story and reading the purpose of the act, it almost took on a different meaning. It says that the act is to contribute to the empowerment of the vulnerable person and all of a sudden, as you said, as they empower your son, who is empowering them, actually giving them enough ammunition for you to fight, to deal with the situation that you know best. It is this I think that the law, the legislation, should understand.

I may not ask you any question, but tell you that you share that with me. As I said, we all listened, and I hope the things you say will direct the government and the legal minds when they try to wrestle around different words for that one word of what happened, that could make it a nightmare for you for life and all for those.

I fully agree with you that empowerment should start with the love of the family, to empower that family, and sometimes many of the family would want to help those who are destitute or disillusioned in any way. If the family is there, those directions and the support is stronger there. If there is not such a family, then advocates are important, with guidelines.

**Mrs Young:** But you would agree the family first?

**Mr Curling:** The family first.

**Mr J. Wilson:** Mrs Young, I know it does not alleviate the suffering you go through as a family, but I cannot help but agree with almost everything you have said. I have a brother with schizophrenia. My mother is a schoolteacher, with red hair too. We have gone through over the last four years and are still going through exactly what you have outlined. You are right: We have allowed and our predecessors have allowed society to go rights-crazy to the point where you cannot really sort out who has the right to be what or do what. Now in our society it is so backwards you have the right to be wrong, you have the right to make the wrong decision on behalf of patients and people who suffer with paranoid schizophrenia. It is very sad and the problem we have in our caucus with this legislation is, we do not see that this in any way corrects it.

**Mrs Young:** No.

**Mr J. Wilson:** I will tell you that maybe your other son would want to be an MPP, because that is the only way I could get the rights-crazy people to stop harassing my

family and coming between me and our loved ones. Not everyone is in that fortunate situation. They sure back off when you get elected to the Legislature.

Mr Sterling has a more technical point. I just want you to know that we do understand where you are coming from and we are going to work as hard as we can to try to change it.

**Mrs Young:** I think, if I may respond to that, right now in Peterborough we have a situation which seems such a dichotomy. We had a fellow who was working with CMHA, finding housing for schizophrenics. He befriended some of them and then he was let go by CMHA. So he was placarding CMHA for them. Then they used a government grant, I understand second hand, to hire him as a patient advocate and he is now going into the hospital and talking to schizophrenics, telling them they do not have to take their medication.

I was just at a meeting last week with Kelly Lynch, who is the head of the schizophrenic clinic in Peterborough, and she says she is having a difficult time trying to get some of her clients now to take their medication. Schizophrenics must have their medication. So here you have a government paying her to help the schizophrenics and the government paying this other fellow to tell them no. They are working against each other. It may sound funny, but it is awful.

**Mr J. Wilson:** Wait till they start suing each other. That gets to be quite interesting.

**Mrs Young:** I think this legislation, if it stays the way it is, will leave it open to a lot of that.

**Mr Sterling:** I have a great deal of problem with this advocacy bill with regard to schizophrenic patients. The Advocacy Commission is going to be partisan in nature. In other words, they are not going to lose the edge of being overzealous defenders of your son or any other schizophrenic patient. The board is going to be made up purposely of people who will have that bent. The groups that represent that community that is seeking the Advocacy Commission make no bones about it, that it is going to be partisan and that it is not going to be accountable. It is not even going to be accountable to me as a member of the Legislature, according to this legislation.

**Mrs Young:** I know.

**Mr Sterling:** It is going to be out there. They are going to set it adrift and it will be able to do as it pleases. It is a frightening prospect in terms of the accountability of the commission. There is nothing in the legislation which puts limitations on these people. These people are going to have all the benefits of being civil servants and the job security that goes with that. Therefore the prospect—I hope there is a very small number—of bad advocates is certainly there. I have a great deal of fear, particularly with schizophrenic patients, that this model is being used. I think it is totally inappropriate. It may be appropriate for some other kinds of situations, but I think it is totally inappropriate.

One of the advantages of Bill 108 is perhaps the prospect that people who care about schizophrenic patients will



be able to become guardians for the personal care of the schizophrenic son or brother or whatever.

I would like to ask the legal counsel for the Ministry of Health what powers that guardian—either court-appointed for the personal care or if the schizophrenic patient has a lucid moment and makes a power of attorney appointing the guardian; I know it is not in your case but it does happen in some cases where people are on medication—has with respect to forcing a schizophrenic patient to take medication. Do they have any powers at all?

**Ms Bentivegna:** They would have the powers to make the treatment decisions once it had been established that the person was mentally incompetent. If that person went to the review board and the board upheld the finding of the health practitioner that the person was mentally incapable, then the treatment decision would be up to either the person named in the power of attorney or the other persons on the list. Yes, they would make the treatment decision.

**Mr Sterling:** With the other laws associated with holding a person within a hospital, a mental institution, will it be easier for our witness to have her son treated, if she can have him certified, if she can become the guardian?

1640

**Ms Bentivegna:** There are two different concepts. One is the Mental Health Act where the person is an involuntary patient because he is a danger to himself or to another, and then the separate issue of treatment. Now, what consent deals with, the Consent to Treatment Act, is the issue of treatment. It allows, as I said, once there is the finding of incapacity, if it is not contested or if it is confirmed the person is incapable, that the substitute can admit the person to a psychiatric facility or a hospital, if that person is not objecting. If he is objecting, under the Substitute Decisions Act only a guardian who has the power to admit or, under a validated power of attorney, has been given that power by the person to admit him, can admit him.

**Mr Sterling:** When the person is admitted, does the advocate come into the process at that point in time, or does the advocate come into the process during the appointment of the guardian?

**Ms Bentivegna:** The advocate comes in during the appointment or at the time of the finding of incapacity under the Consent to Treatment Act. That is when it would be done.

**Mr Sterling:** So that once you are past that step, you have the guardianship and you have the right to admit against the will of the schizophrenic patient, you call the police and you say: "I am the guardian. Here is my paper. I want my son in the hospital."

**Ms Bentivegna:** There is nothing in the act now that allows that step of calling the police. Under the Mental Health Act it is there, but under 109, the Consent to Treatment Act, or under Bill 108 there is not that authority to have the police pick someone up.

**Mr Sterling:** How do you get him in the hospital?

**Ms Bentivegna:** That is left open. It is not dealt with as to how you force someone to go.

**Mr Winninger:** The Mental Health Act so continues, the other parts of the Mental Health Act enabling a justice of the peace or the police to take a person to the hospital.

**Ms Bentivegna:** If that person is dangerous, but we have to keep the distinctions. The act allows you to admit the person but neither act deals with how you physically get him there.

**Mr Sterling:** Let's assume you get him there. The brothers or whatever help in terms of either coercing or whatever and they get him there. After having gone through this process, is the guardian in any better position than a mother would be under the present act?

**Ms Bentivegna:** The guardian can be the mother but, yes, the guardian would be because he or she would have the power to consent to treatment. That is the difference. It is not dealing with the fact of the involuntary committal, it is dealing with the treatment. If this person has been found incapable with respect to treatment, then it is the substitute who makes that decision. That is what the Consent to Treatment Act brings. That is not there right now necessarily; the admitting power is new.

**Mr J. Wilson:** But under the Mental Health Act it continues and a person can still sign himself out and you have to go through the review boards. Nothing of that syndrome has been changed, has it?

**Ms Bentivegna:** The consent to treatment rules under the Mental Health Act are repealed, and it is the Consent to Treatment Act that will apply. What stays in the Mental Health Act is the committal, the involuntary admission and those reviews. But any finding of incapacity with respect to treatment and the consent to treatment as such, whether the person is capable of consenting on his own behalf, if he is incapable then it is a substitute role in Bill 109, the Consent to Treatment Act.

**Mr Sterling:** If the guardian is saying "I consent to the treatment," which is basically contrary to what the schizophrenic patient wants, will the patient be treated?

**Ms Bentivegna:** If the patient is incapable, yes.

**Mr J. Wilson:** But also—

**Mr Sterling:** Against his will at that point in time?

**Ms Bentivegna:** Yes, because if the patient has been judged or found incapable to make that decision, that power is given to the guardian or the substitute.

**Mr J. Wilson:** How do you keep him in an institution?

**Mr Sterling:** Yes, how do you keep him in an institution?

**Mr J. Wilson:** So you can treat him?

**Ms Bentivegna:** As I said, there is no provision right now in the act. It allows you to admit them but there is nothing dealing with forcing people to stay in a certain place. Mr Fram seems to want to add something to that.

**Mr Sterling:** I think it is an important line of questioning to follow because I think that is specifically what you are concerned about.

**Mr J. Wilson:** We are not going far enough on this committee.

**Mr Fram:** If you look at section 56 and an order for guardianship, it provides that if an order for guardianship

of the person is made and the court finds that the custodial authority is necessary, that is the authority to have custody over the person, subsection (3) allows the court to make a further order to apprehend the person. It says:

"If the guardian has custodial power over the person and the court is satisfied that it may be necessary to apprehend him or her, the court may in its order authorize the guardian to do so; in that case the guardian may, with the assistance of a police officer, enter the premises specified in the order, between 9 a.m. and 4 p.m. or during the hours specified in the order, and search for and remove the person, using such force as may be necessary."

So a special order can be obtained from the court to apprehend in those kinds of circumstances.

**Mr Sterling:** That is a special order; it does not go under the normal guardianship?

**Mr Fram:** No, it has to be established to the court's satisfaction that this extraordinary power to take into custody and to apprehend somebody is necessary.

**Mr Sterling:** Is that power there now? Is that changing anything?

**Mr Fram:** There is no power anywhere now, apart from the Mental Health Act, to make that kind of order.

**Mr J. Wilson:** But the Mental Health Act stays in effect, so do you still have to prove, in order to get the order, that they are a danger to themselves or others? What happens to that provision?

**Mr Fram:** No, the issue is not danger to themselves or others in an application for guardianship. Two things have to be established: that the person is incapable and that there is a need for authority of this kind.

**Mr J. Wilson:** Okay, but you have got us offtrack because we are looking at the administrative. You are saying that, according to section 56, if you are going for guardianship and you have to prove incapacity, the court may restrain the person to prove incapacity for the purposes of establishing guardianship. Is that right?

**Mr Sterling:** I think he is talking about two things. First of all, you have to go and get the guardianship. Is that correct, Mr Fram? You go and get the guardianship and then—this is after the act is passed—after you have got the guardianship you go back to court and you say, "I want to put my son in the hospital and this is the reason why I want to put him in the hospital." The judge makes an order that allows you. I guess it is another issue whether or not you get the police to execute the order, but let's say that the police comply. When you get him to the hospital, the guardian has the authority to admit, the authority to consent to treatment, and the patient is being kept basically against his wishes.

**Mr Fram:** Yes, but not in terms of the Mental Health Act as an involuntary patient.

**Mr Sterling:** Then it is indefinite how long you can keep him there? It is up to the guardian to make the call?

**Mr Fram:** It is up to the physicians as well.

**Mr Sterling:** Yes, but he does not have the protection of the Mental Health Act?

**Mr Fram:** He does not have the protection of an involuntary patient if they have accepted him as a voluntary patient on the order of the guardian.

**The Chair:** Thank you very much for the clarification. Mrs Carter.

**Ms Carter:** Mrs Young, as MPP for Peterborough, I would like to welcome you here particularly as my constituent. You have certainly had a great deal to bear and I certainly feel with you on that.

I am sorry you do not like the Advocacy Act because it is intended to help both vulnerable people and their families. Perhaps I could draw your attention to section 1(f) where it says, "to acknowledge, encourage and enhance individual, family and community support for the security and wellbeing of vulnerable persons."

I would also like to point out that the Advocacy Act does not actually create any new rights; it just makes sure that people are informed about what their rights are and provides the necessary resources, which are in fact the advocates, to help them obtain those rights.

1650

**Mrs Young:** To respond to that, in my experience and the experience of many others—because I have been involved with families at the local level, also family meetings from the Kingston catchment area, which is a large area, and at the provincial level—our experiences have been that advocates are more often adversarial to the family than with them.

So I would say theories are often fine but reality is another thing. Our realities and the realities of many others are that that is not the case. You are saying it gives no more rights, but rights people have a more prominent position than we do, and anyone would have to agree with that, reading the legislation. I think, if there is any hierarchical order, we should be there before them.

While we are speaking about this other thing, often when my son becomes very bad and it happens to be on a weekend, I do not know how you get a court order, I do not know how you get a judge. I have spent a whole half day just trying to get a justice of the peace. It has taken me a whole half day to try to get him in, and then he has got to convince the psychiatrist even to keep him.

You could go on and on, and I know I am going on and I do not mean to go over my time. It is just that I only told you—

**The Chair:** We are already there, but—

**Ms Carter:** As I say, I feel for you, and I know there are lots of people in Peterborough and everywhere else—

**Mrs Young:** I would just like you to take that into consideration.

**Ms Carter:** —who are in a similar position, but I think we have to remember also that there are different degrees, as you said yourself, of the illness and maybe a different approach is appropriate in different circumstances.

**Mrs Young:** Schizophrenia is unique.

**Mr Winner:** I would like to thank you. I am not unsympathetic to your position, because I too have a brother who is schizophrenic, but at the same time, I spent



a good part of my legal practice representing psychiatric patients or representing the official guardian when the capacity to treatment was necessary.

We talked about the red herring of how you get people to the psychiatric facility when there is no guardianship order. Quite frankly, if the police find you are a danger or they suspect you are a danger to yourself or others or in danger of imminent and serious bodily harm, they take you there. Sometimes it is hard to get them to do that. Sometimes it is hard to persuade a justice of the peace to do that. But what I would like to suggest to you is that Bill 108 actually enhances your powers, and I would like to suggest why. A psychiatrist at the mental facility could decide that your son lacks capacity to consent to treatment.

**Mrs Young:** But I have to get him there.

**Mr Winner:** But he does not know the nature of the treatment or he does not know the consequences of receiving the treatment or not receiving it. That is entirely dependent on the doctor making that finding of capacity. Only then, under the present legislation, under the Mental Health Act, can they go and look for substitute decision-makers for the purpose of treatment.

Our legislation, Bill 108, provides that you can apply to become a guardian for the personal care of your son. As Mr Fram has testified, once you have that guardianship order, you can then have your son admitted and you can request the treatment that you feel he needs. Unless he challenges your guardianship—

**Mrs Young:** Which he will.

**Mr Winner:** —that may be the only way that he can get around it. Instead of your being entirely dependent on this psychiatrist, who may have second thoughts about finding your son lacking in capacity to consent to treatment, you have that protection there. So Bill 108 actually goes beyond the protections for you that are presently in the Mental Health Act.

**Mrs Young:** Even if Bill 108 said the family should be considered as guardian first, there is nothing in there that even says you will be guardian. You can apply—

**Mr Winner:** It is in there, and there is a preference for family.

**Mr Sterling:** I am in the opposition, so I am not necessarily with him, but I do agree with him that under Bill 108 there are—

**Mr Malkowski:** On a point of order, Mr Chairman: I think it is important that we need to clarify, and Ms Spinks will clarify a point here.

**The Chair:** It is not a point of order but a point of clarification.

**Ms Spinks:** Mr Sterling referred to the accountability of the commission. The commission will be accountable. The commission is required under the Advocacy Act to report annually to the minister, who is required to file that report before the Legislature. Ultimately the government is responsible for all its agencies, boards and commissions, and the Advocacy Commission will be no different.

**Mr Sterling:** I have been here for 15 years, and I do not know about that. But I think what Mr Winner is

saying, and I think that what he is saying is correct, is that there appears to be more opportunity under Bill 108 for you to—

**Mr Malkowski:** On a point of order, Mr Chairman: We are not providing equal time. I think we have to provide equal time. We have already gone way over our time.

**The Chair:** Yes, we have, but because of the technical nature that we went through on this and the personal nature, I thought it was beneficial to the committee to listen to some of this.

**Mr Sterling:** I am trying to support the government side with regard to this thing.

**The Chair:** Mr Sterling, if you could be brief.

**Mr J. Wilson:** They do not even know when you are being helpful, Norm.

**Mr Sterling:** I give up.

**Ms Akande:** We recognize your support, Mr Sterling. One of the things I would like to know about is—and I think counsel will probably be able to respond to this, and this is under 108—if the family has taken on guardianship and someone is admitted, is it necessary or is it always possible to have the review at regular intervals in spite of the assessment? I mean, why is it—well, I have asked counsel.

**The Chair:** Briefly, please.

**Mr Fram:** The provisions of the Mental Health Act that apply to involuntary patients would not apply because the patient would be on the consent of the person who is there voluntarily. That is, the person is not there as an involuntary patient; that person need not be dangerous to himself or others within the test.

**Ms Akande:** Excuse me just a moment. If in fact the family has now acquired guardianship and has taken the child to the facility and has had it admitted—so the person has not gone voluntarily; the family has had him committed—is the review then as regular and as frequent? Is it every three months?

**Mr Fram:** No.

**Ms Akande:** What brings up the assessment?

**Mr Fram:** The way the question would be addressed is that an application to vary the guardianship order would be brought or a request to the public guardian and trustee's office would be brought, because the guardianship order might be inappropriately used. Those would be the checks on the system, and the advocate in the psychiatric facility would bring those matters to the attention of the person who, if he wanted to get out—

**Ms Akande:** Would that be initiated by the guardian?

**Mr Fram:** No. That would be initiated by the person who was in the facility.

**Ms Akande:** All right. Is that person motivated to do that or is it brought to his attention by the guardian? Does the guardian say, "I think it's appropriate that you should be bringing this action so that in fact this is not reviewed every three months"? We cannot get bogged down in paper.

**Mr Fram:** Right. No, the decision about treatment of a voluntary patient is between the person who is deciding, in this case the guardian, and the physician, so there is not any review. The person is in there, receives the treatment that the physician thinks is appropriate and that the guardian has approved. There would not be the review that is provided for involuntary patients, because technically the person would not be an involuntary patient.

**Ms Akande:** So that in fact it would be more supportive of the situation?

**Mr Fram:** It would be more supportive. It would be done not on the criteria of involuntary committal because of dangerousness; it would be there as a pure treatment decision done by the guardian.

**Mr Poirier:** I just wanted to see—

**The Chair:** Very quickly.

**Mr Poirier:** Yes, very quickly. Why does the system-maker have to get a lawyer and do this, repeat this every time, and why should it be a lawyer/cost type of process where somebody like Mrs Young would have to go get a lawyer and go in front of the legal system every time on a regular basis like this? Is that going to be eliminated?

**Mr Fram:** Assuming she got the guardianship order and assuming it was contested—otherwise she probably would not need a lawyer to get the order; but she gets the order. The issue is quite an extraordinary power. She has now permitted her son to live in a group home. Under normal circumstances, things are going along. Now she wants to have her son apprehended. That is the triggering mechanism where somebody has to say there is a reason for this apprehension.

**Mr Poirier:** Okay. So what if the judge says there is a reason and gives her the right. She does not have to apply every three months to get that right. It is on an ongoing basis, right?

**Mr Fram:** That is right.

**Mr Poirier:** So this would relieve her nightmare.

**Mr Fram:** She could exercise the right. The person would be then apprehended and taken to the appropriate place, where she could consent to treatment. But what would happen is that, assuming the psychiatric facility was going to admit, her custodial power would allow her to

have the person there for the purpose of treatment for as long as the treatment was necessary.

**Mr Poirier:** As determined by the medical authorities.

**Mr Fram:** And by the guardian.

**Mr Poirier:** Really? What if there was a difference? What if the medical authorities said he can go—

**Mr Fram:** The guardian cannot ask a doctor to do treatment that the doctor thinks is inappropriate.

**Mr Poirier:** Of course not.

**Mr Fram:** On the other hand, it is the guardian who makes treatment decisions in consultation with the physician.

**Mr Sterling:** Could I just ask—

**The Chair:** I think we are just going to keep getting into more “what ifs.”

**Mr Sterling:** No.

**The Chair:** Unless you are very specific.

**Mr Sterling:** Okay. I will be very specific. Often with schizophrenic patients, when they get out in the community, they are not with their parents, their parents are not in the area, and I think a lot of people agree with the schizophrenic patients that if they continue to take their medication, then the disease will not return. There are lots of reasons why schizophrenic patients do not take it. There are side effects, it depresses some of them etc, and it is not in human nature to continue to take medicine when you are starting to feel better. Is there within the guardianship angle anything which would force a schizophrenic patient to go to Dr X in community Y to receive his or her medication on a daily basis? Can you do that kind of thing?

**Mr Fram:** A guardian can be given the authority to make treatment decisions, so yes, a guardian can be given custodial authority, the right to take the person somewhere, the right to decide where the person lives. Those powers can be conferred on the guardian.

**Mr Sterling:** So that in terms of saying to the patient, “If you do not show up and take your medicine, then—

**Mr Fram:** “Then we will come and get you.”

**The Chair:** Mrs Young, on behalf of the committee, I would like to thank you and your son for his moral support in giving your presentation today.

The committee adjourned at 1704.



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